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code of federal regulations

Transportation

49

PARTS 1000 TO 1199
Revised as of October 1, 1990

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PARTS 1000 TO 1199

Revised as of October 1, 1990

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AND FUTURE EFFECT

AS OF OCTOBER 1, 1990

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Cite this Code: **CFR**

To cite the regulations in this volume use title, part and section number. Thus, **49 CFR 1000.1** *refers to title 49, part 1000, section 1.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16...as of January 1
Title 17 through Title 27...as of April 1
Title 28 through Title 41...as of July 1
Title 42 through Title 50...as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

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An index to the text of "Title 3—The President" is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, DC 20402 (telephone 202-783-3238).

MARTHA L. GIRARD,
Director,
Office of the Federal Register.

October 1, 1990.

THIS TITLE

Title 49—TRANSPORTATION is composed of seven volumes. The parts in these volumes are arranged in the following order: Parts 1-99, Parts 100-177, Parts 178-199, Parts 200-399, Parts 400-999, Parts 1000-1199, Part 1200-End. The first volume (Parts 1-99) contains current regulations issued under Subtitle A—Office of the Secretary of Transportation; the second volume (Parts 100-177) and the third volume (Parts 178-199) contain the current regulations issued under Chapter I—Research and Special Programs Administration (DOT); the fourth volume (Parts 200-399) contains the current regulations issued under Chapter II—Federal Railroad Administration (DOT), and Chapter III—Federal Highway Administration (DOT); the fifth volume (Parts 400-999) contains the current regulations issued under Chapter IV—Coast Guard (DOT), Chapter V—National Highway Traffic Safety Administration (DOT), Chapter VI—Urban Mass Transportation Administration (DOT), Chapter VII—National Railroad Passenger Corporation (AMTRAK), and Chapter VIII—National Transportation Safety Board; the sixth volume (Parts 1000-1199) and the seventh volume (Part 1200-End) both contain current regulations issued under Chapter X—Interstate Commerce Commission. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 1990.

In the volume containing Parts 100-177, see § 172.101 for the Hazardous Materials Table. An Identification Number Cross Reference Index to Proper Shipping Names in §§ 172.101 and 172.102 appears at the beginning of Part 172. Part 325 and Parts 350-399 of this title contain the Federal Motor Carrier Safety Regulations and related regulations, and a Subject Index to these regulations follows Chapter III. The Federal Motor Vehicle Safety Standards appear in Part 571.

Redesignation tables and a derivation table for Chapter X—Interstate Commerce Commission appear in the Finding Aids section of the sixth and seventh volumes.

For this volume Jim Wickliffe was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

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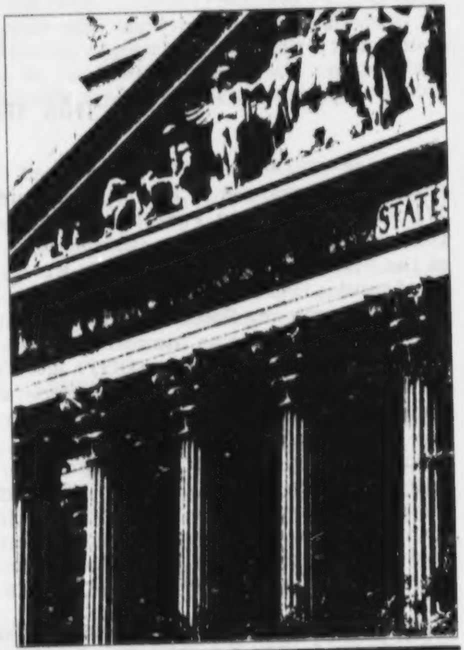

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Title 49—Transportation

(This book contains Parts 1000 to 1199)

SUBTITLE B—OTHER REGULATIONS RELATING TO TRANSPORTATION (CONTINUED):

Part

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Subtitle B—Other Regulations Relating to Transportation—Continued

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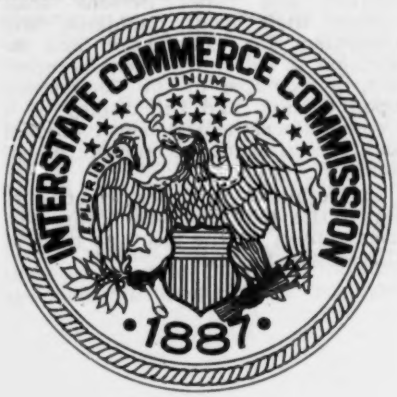
Subpart A—General

AUTHORITY: 49 U.S.C. 10303, 10321, 11144 and 11145.

SOURCE: 32 FR 20004, Dec. 20, 1967, unless otherwise noted.

§ 1000.1 Description of official seal.

(a) *Description.* A constellation of 13 stars above an American bald eagle with wings displayed and inverted holding in his dexter talon an olive branch and in his sinister a bundle of seven arrows, in his beak a scroll inscribed "E Pluribus Unum," bearing a shield paleways of 13 pieces argent and gules, a chief azure; all within an encircling inscription "Interstate Commerce Commission, 1887," and a decorative outer border.



(b) *Colors.* When illustrated in color, the background is National Flag blue, the eagle and olive branch proper, and the arrows, stars, scroll and encircling inscription white. The motto is of the same blue as the background, and the blue of the shield is a medium shade. The outer border of the seal and the edge of the shield are gold color.

§ 1000.5 Credentials required by special agents, accountants, and examiners.

(a) Carrier records and property subject to inspection and examination.

(1) Persons appointed as special agents, accountants, and examiners of the Commission are authorized to enter upon, to inspect and examine any and all lands, buildings, and equipment of carriers and other persons subject to the Interstate Commerce Act and related Acts, and to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents of carriers, and other persons subject to the Act.

(2) Inspection or copying authority with respect to persons who furnish railroad cars or protective service against heat or cold to or on behalf of a carrier or an express company, shall be limited to accounts, books, records, memoranda, correspondence, and other documents which pertain or relate to cars or protective service.

(3) Carriers and other persons subject to the Act shall submit their accounts, books, records, memoranda, correspondence, and other documents for inspection and copying, and such carriers and other persons shall submit their lands, buildings, and equipment for examination and inspection, to any special agent, accountant, or examiner of the Commission upon demand and the display of a Commission credential identifying him as a special agent, accountant, or examiner.

(b) Definition of "other persons subject to the Act." The term "other persons subject to the Act," as used in this section, includes:

(1) Brokers subject to part II of the Interstate Commerce Act, freight forwarders subject to part IV of the Act, lessors of carrier operating rights, receivers, trustees, administrators, executors, and other persons having custody, possession, or control of barrier operations or the business of other persons subject to the Act;

(2) Persons who furnish railroad cars or protective service against heat or cold to or on behalf of railroads or express companies (but only with respect to records pertaining to the cards or protective services to be furnished);

(3) Associations of carriers or brokers subject to the Act which perform any service or engage in any activities in connection with any traffic, transportation, or facilities subject to the Act;

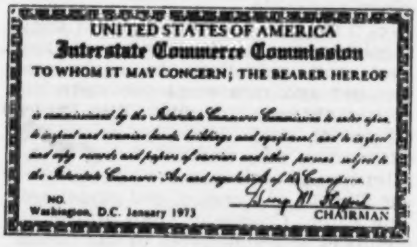
(4) And, to the extent specified in orders of the Commission issued under section 5 of the Act, persons controlling two or more carriers.

(c) Definition of special agents, accountants, and examiners. The duties of the following described employees or positions, and such other employees of the Commission as the Chairman shall specify in writing, include those of special agent, accountant or examiner, and they are hereby authorized to inspect and copy records and to inspect and examine lands, buildings, and equipment in the same manner and to the same extent as special agents, accountants, and examiners:

Chairman
Vice Chairman
Commissioners
Bureau and Office Heads and Directors; Associate, Assistant and Deputy Heads and Directors; Assistants to Heads and Directors; Chiefs and Assistant Chiefs of Sections; and Branch Chiefs of all Headquarters Bureaus, Offices and Sections
Public Information Officer and Assistant
Chairpersons of Employee Boards
Regional Directors

Assistant and Associate Regional Directors
Regional Counsel
Assistant Regional Counsel
Branch Chiefs, Field Offices
Trial Attorneys
Transportation Assistants and Consumer Specialists
Transportation Industry Analysts
Railroad Car Service Agents
District Supervisors
Auditors and Financial Analysts
Economists
Investigators
Administrative Law Judges

(d) Facsimile of the Commission's credentials:



UNITED STATES OF AMERICA
Interstate Commerce Commission
TO WHOM IT MAY CONCERN; THE BEARER HEREOF

is commissioned by the Interstate Commerce Commission to enter upon, to inspect and examine lands, buildings and equipment, and to inspect and copy records and papers of carriers and other persons subject to the Interstate Commerce Act and regulations of the Commission.

NO.
Washington, D.C. January 1973
CHAIRMAN

[38 FR 7229, Mar. 19, 1973, as amended at 45 FR 80292, Dec. 4, 1980; 46 FR 30502, June 9, 1981]

§ 1000.10 Availability of statements of policy, interpretations, and other matters not required to be published in the Federal Register.

(a) The Interstate Commerce Commission, in performing its duties under the Interstate Commerce Act, frequently formulates and adopts statements of general policy, or interpretations of general applicability, and other matters not required to be published in the FEDERAL REGISTER in rendering decisions in proceedings involving the operating rights, financial structures, or rates and practices of brokers, electric railways, express companies, freight forwarders, motor carriers, pipelines, private car companies, rail carriers, and water carriers. Because such statements of policy and interpretations of general applicability are scattered throughout more than 320,000 pages in over 400 volumes of Commission reports and because such policies and interpretations must be revised or repealed from time to time as required by changing technology and economic conditions, it is not feasible, and is wholly impractical, to state them separately and publish them in the FEDERAL REGISTER. Further, to be fully understood, such statements of general policy or interpretations of general applicability must be read in context in the Commission's reports where they are explained, revised, or repealed in relation to the factual situations to which they are applicable. Notice is hereby given that those portions of the printed reports of decisions of the Interstate Commerce Commission which contain statements of general policy or interpretations of general applicability are digested, arranged topically, and indexed both in the multivolume set "Interstate Commerce Acts Annotated" (supplemented monthly by the "Advance Bulletin of Interstate Commerce Acts Annotated") and in the index-digests in the backs of bound volumes of Interstate Commerce Commission reports. The multivolume set, "Interstate Commerce Acts Annotated" and the three series of Interstate Commerce Commission reports (i.e., I.C.C., M.C.C. and Val. Rep.) are published and sold by the Government Printing Office, and are sent free to Depository Libraries (44 U.S.C. 82), which include all State libraries, two libraries in each congressional district, the libraries of land grant colleges, and other libraries. Copies are also available for public examination in the Interstate Commerce Commission Library in Washington, D.C. The indexes in these publications are maintained in compliance with the provision in 5 United States Code 552(a)(2). The "Advance Bulletin of Interstate Commerce Acts Annotated" and recent reports, which have not yet been included in published indexes, are available upon request from the

Office of the Secretary, Interstate Commerce Commission.

(b) Because of the large volume of reports, it is the policy of the Commission to print for publication in bound volumes only reports of those cases decided by the entire Commission or by a division thereof and more significant reports of employee boards. With few exceptions, reports and orders of employee boards are duplicated ("no print reports and orders") and distributed to tha parties and made available to the press. From time to time "no print reports and orders" are cited as precedents in other cases. Therefore, notice is hereby given that duplicated "no print reports and orders", are indexed by docket number and title, and filed by subject matter and are available for public inspection in the Section of Reference Services of the Commission in Washington, DC. These indexes and files are maintained in compliance with the provision in 5 United States Code 552(a)(2). Persons outside Washington, DC, can obtain information about, or copies of, such duplicated reports by writing to the Secretary of the Commission.

Subpart B—Canons of Conduct

Authority: Sec. 6, 36 Stat. 915, as amended, secs. 12, 20, 24 Stat. 383, as amended, 386 as amend, sec. 25, 41 Stat. 498, as amended, sec 220, 49 Stat. 563 as amended, sec. 313, 54 Stat. 944, as amended, sec, 412, 56 Stat. 294, as amended; 45 U.S.C. 29, 49 U.S.C. 12, 20, 26, 320, 913, 1012, 5 CFR Part 735.

Source: 44 FR 4610, Jan. 22, 1979, unless otherwise noted.

§ 1000.735–11 General standard of conduct.

Members and employees of the Commission hold a public trust. To honor that trust, they must maintain unusually high standards of honesty, integrity, and impartiality in all aspects of their official conduct. They shall perform their duties fairly and expeditiously and with a view to carrying out the national transportation policy. They shall be courteous and prompt in serving the public.

§ 1000.735–12 Interpretation and advisory service.

(a) The Managing Director's Counsel shall be the Commission's Ethics Counselor. The Director of Personnel shall be the principal Deputy Ethics Counselor. The Ethics Counselor, with the approval of the Chairman, shall designate additional Deputy Ethics Counselors as he or she deems necessary or appropriate to carry out his or her responsibilities under these Canons.

(b) On June 30 of each year, the Ethics Counselor shall report to the Commission on the operation of the Canons and guidelines with any recommendations the Ethics Counselor deems advisable.

(c) The Director of Personnel shall furnish copies of the Canons of Conduct and guidelines to each new member and new employee upon his or her entrance on duty. The Ethics Counselor shall annually, or as circumstances may warrant, bring to the attention of each member or employee the Canons of Conduct and guidelines. The Ethics Counselor shall inform all members and employees of the names of the Deputy Ethics Counselors and of the procedures for seeking advice concerning the interpretation and application of these Canons.

[44 FR 4610, Jan. 22, 1979, as amended at 48 FR 30880, July 5, 1983; 55 FR 23937, June 13, 1990]

§ 1000.735–13 Prohibited financial interests.

Members and employees shall not be employed by, or hold any official relation to, or own any securities of, or be in any manner pecuniarily interested in carriers to the extent prohibited by the Interstate Commerce Act. This Canon prohibits: (a) Any direct interest in any for-hire transportation company whether or not subject to the Interstate Commerce Act, (b) any interest in any company that (1) owns or controls and (2) has more than two percent of its assets invested in or derives more than two percent of its income from a for-hire transportation company whether or not subject to the Interstate Commerce Act, and (c) any interest in any company, mutual fund, or other enterprise which in turn has an interest of more than ten percent of its assets invested in or derives more than ten percent of its income from for-hire transportation companies whether or not subject to the Interstate Commerce Act.

Guidelines

The two-percent and ten-percent limitations of (b) and (c) should be interpreted as applying only to direct holdings of a company, mutual fund, or other enterprise, and not to indirect holdings. In determining whether these limitations are applicable, members and employees may rely on the most recent financial statement issued by the enterprise to security holders.

Where a previously-proper holding of a member or employee becomes prohibited because of the enterprise's acquisition of an interest in a for-hire transportation company, the holding must be disposed of within nine months.

The financial interests prohibited by this section are absolute unless a waiver, based on serious financial hardship or remoteness of interest, is obtained from the Ethics Counselor.

§ 1000.735-14 Disqualifying interests.

(a) Members and employees shall not participate in any matter in which they have a substantial pecuniary interest or in which their impartiality might reasonably be questioned.

(b) Once members or employees have been disqualified from participating in any matter, they shall not engage in any discussion or be present during any action relating to the matter.

Guidelines

Members and employees should disqualify themselves whenever, in their own judgment, a disqualifying interest exists. If an employee's disqualification to participate in a matter is questioned by someone else and the employee declines to disqualify himself or herself, the final determination as to whether the employee should be disqualified will be made by the Chairman. A member is the sole judge of his or her own disqualification.

A "substantial pecuniary interest" should be interpreted to include any situation in which members or employees, or their parents, spouses, children, or other relatives (including in-laws) residing in the same household, have a direct or indirect financial interest that could be materially affected.

Matters in which members or employees' "impartiality might reasonably be questioned" should be interpreted to include, among other things, any matter in which they or their parents, spouses, children, or other relatives (including in-laws) residing in the same household have a past or present association with a party or a representative of a party affected by the matter which reasonably appears to affect their decision.

§ 1000.735-15 Gifts, entertainment, and favors.

(a) Members and employees of the Commission shall not solicit or accept, directly or indirectly, any gift, gratuity, entertainment, favor, loan, or any other thing of monetary value, from any person, association, or group, that: (1) Has, or is seeking to obtain, contractual or other business or financial relationships with the Commission; or (2) conducts operations or activities that are subject to regulation by the Commission; or (3) has interests which may be substantially affected by the member's or employee's performance or nonperformance of his or her official duty; or (4) is in any way attempting to affect the member's or employee's official actions. The requirements of this paragraph do not apply to: (i) Obvious family or personal relationships when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors; (ii) acceptance of food or refreshments of nominal value on infrequent occasions in the course of a luncheon, dinner, or other meeting or an inspection tour where a member or employee may properly be in attendance; (iii) acceptance of unsolicited advertising or promotional material of nominal intrinsic value, such as pens, pencils, note pads, calendars, and other similar items; or (iv) acceptance of loans from banks or other financial institutions on customary terms of finance for proper and usual activities of members or employees, such as home mortgage loans.

(b) Members and employees shall avoid any action, whether or not specifically prohibited, which might result in, or create the appearance of: (1) Using public office for private gain; (2) giving preferential treatment to any person; (3) impeding Commission efficiency or economy; (4) losing complete independence or impartiality; (5) making a Commission decision outside official channels; or (6) affecting adversely the confidence of the public in the integrity of the Commission.

(c) Members and employees shall not solicit a contribution from any other member or employee, or make a donation for a gift to a member or employee in a superior official position, or accept gifts from members or employees receiving less salary than themselves. This paragraph does not prohibit a voluntary gift or donation of nominal value made on a special occasion such as marriage, illness, or retirement.

(d) Members and employees shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(e) Neither this section nor § 1000.735-17 precludes a member or employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow a member or employee to be reimbursed or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow a member or employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967 (46 Comp. Gen. 689).

GUIDELINES

(1) This canon is designed to prohibit conduct which gives the appearance of or creates an actual conflict of interest for members or employees.

The term "gift, gratuity, entertainment, favor, loan, or any other thing of monetary value" includes such things as invitations to lunches, dinners, parties, or other social events; tickets to cultural or sporting events; free use of facilities such as hotels or other accommodations; free transportation; free use of club privileges or similar facilities.

The persons, associations, and groups from whom gifts and other things of value may not be accepted include, but are not limited to, regulated entities, associations of regulated entities, and individuals or firms whose work involves to a substantial extent the representation of regulated entities.

A policy favoring the prohibitions of this canon rather than stretching the exceptions is intended.

(2) Members and employees considering possible proposals for future employment with persons, associations, or groups described in the canon and these guidelines may accept reimbursement for reasonable travel and subsistence expenses actually incurred during employment negotiations provided they promptly report the relevant details concerning the reimbursement to the Director of Personnel, who shall treat the reports as strictly confidential. At a minimum, the following information should be reported: name and address of prospective employer; dates of any travel and hotel accommodations; statement of amount reimbursed, itemized to show travel, lodging, and meals. These reports will be kept strictly confidential and will not be considered in any personnel actions affecting the persons filing them, unless they show evidence of improper conduct.

While this guideline permits members and employees to accept reimbursement for reasonable expenses related to *bona fide* employment negotiations, it should not under any circumstances be interpreted to permit reimbursement for lavish or excessive personal expenses. Members and employees are also reminded of the requirements of Canon 18 governing withdrawal from participation in matters affecting a prospective employer both during and after negotiations.

(3) The "obvious family or personal relationship" exception permits the exchange of gifts and entertainment where it is clear that the offering is prompted by the personal of family relationship. If the donor's business interests might be the motivating factor behind the gift or entertainment, the member or employee should carefully consider the circumstances surrounding the offer before accepting. The purpose of this exception is to avoid interfering with a member's or employee's personal relationships which unrelated to his or her job.

A gift or entertainment from a relative is mormally permissible, unless it appears that it is motivated by the relative's business interests. In the case of personal friends who would otherwise be forbidden donors, members and employees should carefully consider the circumstances surrounding gifts and entertainment and should take reasonable steps to avoid the appearance of a conflict of interest. For example, members and employees are free to meet such personal friends for lunch or dinner but to avoid the appearance of a conflict of interest should pay their own checks. Similarly, members and employees may accept gifts from such personal friends on a special occasion, such as a birthday, wedding, or Christmas, if such gifts are normally exchanged by them. But members and employees should consider whether the donor would have offered the item of value if he or she were in a different business and if the recipient were not a Commission employee. If there is doubt concerning the application of the exception, the gift should not be accepted.

(4) Exception (ii) applies to those events at which members and employees may properly be in attendance.

Members may attend any event which in their own opinion will benefit the Commission and assist in performing their official duties, as long as attendance will not reflect adversely on their impartiality. In deciding whether to attend an event members should carefully consider: (1) The identity of the sponsor, (2) the location, (3) the duration, (4) the purpose, and (5) the persons expected to attend.

Employees may properly attend events sponsored by a person or entity subject to Commission regulation if the event can reasonably be classified as a business meeting involving a formal program designed to be informative or educational. Attendance at events of this nature is subject to approval by the head of the Bureau or Office involved. Where an event is primarily social in character, employees may attend only where their attendance is ruled to be proper by the Chairman or the Ethics Counselor. Attendance will be authorized only if it will further the interests of and provide benefits to the Commission, in light of the employee's job duties and level of responsibility.

Attendance at primarily social events sponsored by a broadly-based group with members from many different organizations or companies, such as the ICC Practitioners, and attended by large numbers of persons in addition to Commission members or employees, will normally be authorized, unless the circumstances create an appearance of impropriety. Attendance at events sponsored by one or a few companies, or by other narrowly-based groups, or at events to which only Commission members and employees are invited, will be closely scrutinized; attendance will be authorized only if there is a clear benefit to the Commission and the public interest.

When authorizing an employee to attend an event which is sponsored by a person or entity subject to Commission regulation and which is to last more than one day, the approving official will designate the period of time the employee may be in attendance, based on his or her judgment as to which segments of the event are relevant to the employee's responsibilities. An employee authorized to attend an out-of-town event may remain at the event for a longer period only upon the express approval of his or her Bureau or Office head. An employee's time away from the office beyond that spent attending that portion of an event which is relevant to the employee's responsibilities will be charged to annual leave.

When attending a meeting or other event, members and employees may accept a plaque or similar memento in honor of their appearance and any item of nominal value given to all participants.

(5) The phrase "luncheon, dinner, or other meeting," as used in exception (ii), refers primarily to working sessions that are integrated with a lunch, dinner, or refreshments. For example, an employee in attendance at a day-long seminar that includes a luncheon or dinner as part of the program, or an employee speaking to a luncheon or dinner gathering, may accept the accompanying meal.

The exception also extends to a social hour or dinner event connected with an authorized working session if the social hour or meal is not significantly removed in time from the working session and would not be considered lavish entertainment. For example, an employee scheduled to address a convention meeting or to participate in a panel discussion ordinarily may attend a related social hour sponsored by the host organization on the evening before or the evening after the working meeting, if it is reasonable to expect that attendance may lead to business-related discussions that will further the purposes sought to be served by the employee's participation in the working portion of the conference.

Employees may not otherwise accept invitations to primarily social gatherings sponsored by entities within the class identified in the canon unless authorized to do so by the Chairman or the Ethics Counselor.

The phrase "nominal value," as used in exception (ii), does not lend itself to precise quantification. It may have a different meaning in different situations. In some circumstances, food and refreshments served as part of a working lunch may properly be viewed as of nominal value if the cost is less than ten dollars. The nominal value limitation in that context is designed to preclude lavish meals or entertainment. In connection with an inspection tour, by contrast, only refreshments worth about one dollar or less—the equivalent, for example, of coffee and a doughnut—may ordinarily be viewed as of nominal value. The purpose of the nominal value limitation in the inspection tour context is to allow an employee to accept normal social courtesies but not to accept more substantial food or refreshment that is unwarranted in light of the circumstances.

(6) The "advertising or promotional material" exception is intended to include only inexpensive items that businesses commonly distribute to large numbers of persons. While acceptance of such items is permitted, their display in Commission offices is not encouraged, and discretion should be exercised so that an appearance of impropriety is not created. Candy, fruit, alcoholic beverages, and similar items do not ordinarily fall within this exception.

(7) Paragraph (e) of this section does not allow for reimbursement of travel and subsistence expenses when members or employees travel on official business. The agency has no authority to accept gifts and acceptance of reimbursement would constitute an improper augmentation of the agency's appropriations. Payments from tax exempt organizations (as described by 26 U.S.C. 501(c)(3)) for travel incident to attendance at meetings is permitted.

Examples of the types of organizations described in 26 U.S.C. 501(c)(3) include, *inter alia*, corporations, any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes and that otherwise meet the criteria outlined in the statute.

Acceptance of reimbursement from individuals or organizations which would otherwise represent a conflict of interest is prohibited except as provided in Guideline (2) of this section.

(8) Although the canon allows members and employees to accept some gifts, it does not *require* acceptance of anything. Members and employees may always decline gifts that the canon permits them to accept.

(9) Subsection (c) does not prohibit the voluntary exchange of inexpensive gifts on occasions such as birthdays or holidays.

[44 FR 4610, Jan. 22, 1979, as amended at 48 FR 30880, July 5, 1983]

§ 1000.735-16 Disclosure and misuse of information.

Members and employees of the Commission shall not use for personal gain or disclose to unauthorized persons confidential information not available to the general public. They shall not disclose or release official information prior to the time authorized for its release.

Guidelines

"Confidential information not available to the general public" includes proprietary information submitted to the Commission with the reasonable expectation that it will be treated confidentially. "Official information" includes decisional orders and other agency actions that have not yet been served or otherwise officially released to the public.

This canon prohibits disclosure or release of information in either category to persons not employed by the Commission or employees whose official responsibilities do not require access to the information. The Chairman of the Commission may authorize disclosure or release of confidential information or official information prior to the official release date if he or she determines, in individual cases or in an appropriate class of cases, that such disclosure or release would further important interests of the Commission or the public and would neither significantly compromise the rights of any person nor allow any person improperly to use such information for private financial gain.

§ 1000.735-17 Outside employment and other activity.

(a) Members and employees shall not engage in any outside employment or other outside activity, including teaching, lecturing, writing, consultation, discussion, or appearance, with or without compensation, in circumstances which might: (1) Reasonably result in a conflict of interest or an apparent conflict of interest between their private interests and their official Government duties and responsibilities, or (2) interfere with the efficient performance of their official duties.

(b) Advance authorization for employees to engage in outside employment or other outside activity described in paragraph (a) of this section shall, in any event, be obtained from the Director of Personnel, via supervising channels. See Manual—Administration 22-781 and 24-311.

(c) Members shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission, or which draws substantially on official data or ideas that have not become part of the body of public information.

Guidelines

Outside employment will not be authorized unless it is confined strictly to non-working hours and will not interfere with employees' performance of their official duties.

§ 1000.735–18 Future employment.

If a member or employee of the Commission entertains a proposal for future employment by any entity, the member or employee must refrain from participating in the decision or disposition of any matter in which the entity is known to have a direct or substantial interest during such negotiations. If employment is accepted, the member or employee must continue to refrain from participating in such matters until he or she severs the connection with the Commission.

GUIDELINES

Members and employees are considered to be entertaining a proposal if they: (1) are engaged in negotiations; (2) have submitted applications for employment (including resumes) and have been advised that their applications are being considered, interview with prospective employers or engage in discussions with potential employers concerning the possibility of an offer of employment; or (3) do not immediately reject an unsolicited offer of employment.

[44 FR 4610, Jan. 22, 1979, as amended at 48 FR 30881, July 5, 1983]

§ 1000.735–19 Ex parte communication.

Members and employees of the Commission must conform to the standards adopted by the Commission reprinted in § 1102.2.

[44 FR 4610, Jan. 22, 1979, as amended at 50 FR 30275, July 25, 1985]

§ 1000.735–20 Use of Federal property.

Members and employees of the Commission shall not directly or indirectly use, or allow the use of, Federal property of any kind, including property leased to the Government, for other than officially approved activities. They also have a positive duty and responsibility to protect and conserve all Federal property, which is entrusted or issued to them.

§ 1000.735–21 Use of intoxicants.

Members and employees of the Commission shall not use alcohol, drugs, or other intoxicants so as to impede the discharge of their official duties.

§ 1000.735–22 Prohibited conduct.

Members and employees shall not engage in criminal or dishonest conduct, conduct that significantly interferes with their effective performance of official responsibilities, or conduct that is materially incompatible with their official position.

GUIDELINES

This canon is intended to prohibit unlawful or dishonest conduct. It will not be construed to prohibit legitimate private conduct or to prevent members or employees from exercising rights guaranteed by the laws and Constitution of the United States.

§ 1000.735–23 Intermediaries.

Members and employees of the Commission shall not recommend or suggest the use of any nongovernment intermediary (individual, firm, corporation, or other entity) offering any service as consultant, agency representative, attorney, expeditor, or specialist for the purpose of assisting in any negotiations, transactions, or other business with or before this Commission. However, making available general reference lists of non-governmental intermediaries, the use of which is authorized by the Secretary of the Commission, will not be deemed to violate this section.

GUIDELINES

"General reference lists" refers only to such lists of licensed attorneys and registered practitioners as may be compiled and maintained by a state or local bar association, the ICC Practitioners Association, the Motor Carrier Lawyers Association, and similar organizations. Lists compiled by employees on the basis of their own knowledge or experience are not "general reference lists" within the meaning of the Canon.

§ 1000.735–24 Gambling, betting, and lotteries.

Members and employees shall not participate, while on federally owned or leased property or while on duty for the Commission, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip, ticket, chance, voice, share, or any similar item.

§ 1000.735-25 Miscellaneous statutory provisions.

Members and employees shall acquaint themselves with the statutory provisions described in Appendix to this subpart, which relate to ethical and other conduct as a member and employee of the Commission and the Government.

[44 FR 4610, Jan. 22, 1979, as amended at 48 FR 30881, July 5, 1983]

§ 1000.735-26 Statements of employment and financial interests.

(a) All employees in the positions specified by the Director of Personnel in accordance with 5 CFR 735.403 shall submit to the Director of Personnel within 30 days after their entrance on duty a confidential statement of employment and financial interests on ICC Form No. 1164. Pursuant to the grievance procedures enumerated in the Manual-Administration 22-725, employees so specified may file and have reviewed a complaint that the positions have been improperly designated as requiring the submission of a statement of employment and financial interests. Grievances shall be decided by the Director of Personnel. Appeals of initial decisions shall be decided by the Managing Director.

(b) Any changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. Where no changes or additions occur, a negative report is required.

GUIDELINES

The financial statements required by this section are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of financial statements by employees does not permit them or any other person to participate in matters in which participation is prohibited by law, order, or regulation. Notwithstanding the filing of these statement, employees shall at all times avoid acquiring financial interests or taking other actions that would result in a violation of the conflict-of-interest provisions of 18 U.S.C. 208 or these Canons of Conduct.

In the event that any required information, including holdings placed in trust, is not known to the employee but is known to another person, the employee should request that other person to submit the information on his or her behalf and should report the request in Part IV of ICC Form 1164.

The interest, if any, of a spouse, minor child, or any relative (including in-laws) residing in an employee's immediate household shall be reported as his or her interest. If that information is to be supplied by others, this should be indicated in Part IV of ICC Form 1164. Information will not be required if the reporting individual certifies that he or she has no knowledge of the required information, has made every reasonable effort to obtain it, and neither derives nor expects to derive any benefit from the financial interests involved.

Employees are not required to submit any information relating to their connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civil, or political organization or any similar organization not conducted as a business enterprise or engaged in the ownership or operation of a business enterprise. Educational and other institutions doing research and development or related work involving grants of money from contracts with the Government are deemed "business enterprises" for reporting purposes and should be included.

Any person designated to serve in an "acting" status in one of the positions listed in Appendix I shall file a financial statement in accordance with this canon within 30 days after serving in an "acting" capacity for 30 days.

[44 FR 4610, Jan. 22, 1979, as amended at 48 FR 30881, July 5, 1983]

§ 1000.735-27 Review of statements of employment and financial interests.

(a) The Director of Personnel shall review employees' annual statements and supplementary statements of employment and financial interests to ascertain conflicts of interest or the appearance of conflicts of interest.

(b) Financial statements shall be kept confidential. The Director of Personnel is responsibile for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, these statements except as provided by law or regulation.

(c) The Chief Administrative Law Judge shall review the financial statements of all Administrative Law Judges to avoid conflicts of interest in the assignment of cases. This review shall be in addition to the review by the Director of Personnel.

GUIDELINES

Whenever, following review of the annual and supplementary statements of employment and financial interests, a conflict of interest may exist or appear to exist, the Director of Personnel shall notify the employee concerned, who shall promptly submit an explanation to the Director of Personnel regarding the existence or the appearance of a conflict of interest.

If, after reviewing the employee's explanation and after consulting with the Ethics Counselor, the Director of Personnel concludes that the conflict or appearance of a conflict of interest does exist, the Director of Personnel shall advise the employee of the steps necessary to remedy the situation.

§ 1000.735-28 Disclosure of employment of parent, spouse, child, or other relative.

Each employee whose parent, spouse, or child, or any other relative (including in-laws) residing in the immediate household, is employed by an entity subject to regulation by the Commission shall promptly notify the Director of Personnel of the relative's employment and furnish a detailed statement of the relative's job duties and responsibilities. The employee shall promptly notify the Director of Personnel of any change in the relative's employment, including a change in job duties or responsibilities.

GUIDELINES

The term "employed by an entity subject to regulation by the Commission" includes those who represent and perform a majority of their services for such an entity, as well as those directly employed by such an entity.

Each notification furnished under subparagraph (a) will be reviewed by the Director of Personnel to determine whether the situation presents a conflict of interest or appearance of a conflict of interest.

Whenever, in the opinion of the Director of Personnel, the situation may present a conflict of interest or appearance of a conflict of interest, the Director of Personnel shall notify the employee, who shall promptly submit an explanation regarding the existence or the appearance of a conflict of interest, together with any additional information requested by the Director of Personnel.

If, after reviewing the submitted explanation and information and after consulting with the Ethics Counselor, the Director of Personnel concludes that the situation does present a conflict of interest or an appearance of a conflict of interest, the Director of Personnel shall advise the employee of the necessary steps to remedy the situation. The Director of Personnel may, after consulting with the employee and the employee's Bureau or Office Head, take any personnel action that may be appropriate to eliminate the conflict of interest or appearance of a conflict of interest.

§ 1000.735-29 Specific provisions governing special Government employees.

(a) Special Government employees, as defined in 18 U.S.C. 202, shall not use: (1) Their Government employment for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or another person, particularly one with whom they have family, business, or financial ties; (2) any inside information obtained as a result of Government employment for private gain for themselves or another person either by direct action on their part or by counsel, recommendation, or suggestion to another person, particularly one with whom they have family, business, or financial ties; (3) the Government to coerce, or give the appearance of coercing, a person to provide financial benefit to themselves, or another person, particularly one with whom they have family, business, or financial ties.

(b) Special Government employees shall adhere to all Canons of Conduct specified in this subpart except §§ 1000.735-17(b) and 1000.735-26. In lieu thereof, each special Government employee shall submit a statement of his or her employment and financial interest on ICC Form No. 1163 to the Director of Personnel at the time of his or her employment and shall keep the statement current throughout employment by submitting supplementary statements whenever any change in or addition to the information contained in the statement occurs.

§ 1000.735-30 Sexual harassment.

(a) Members and employees shall not engage in harassment on the basis of sex. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, offensive or unpleasant working environment.

(b) Employees and applicants may follow the standard equal employment opportunities complaint process if they believe they have a work related sexual harassment problem. This requires that the employee or applicant contact an EEO Counselor within 30 days of the alleged harassment, or, if a personnel action is involved within 30 days of its effective date.

(c) The principles involved in this Canon apply to harassment based on race, color, religion, or national origin.

[48 FR 30881, July 5, 1983]

§ 1000.735-31 Disciplinary and other remedial action.

Any violation of these Canons of Conduct by an employee shall be cause for appropriate disciplinary or other remedial action as provided in the Manual—Administration 22-751, which may be in addition to any penalty prescribed by law.

[44 FR 4610, Jan. 22, 1979. Redesignated at 48 FR 30881, July 5, 1983]

APPENDIX—MISCELLANEOUS STATUTORY PROVISIONS

Members and employees have an affirmative duty to acquaint themselves with all statutory provisions relating to the lawfulness and propriety of their official conduct. The following provisions, most of which apply to federal employees and officials in general, are presented in summary form. The actual text should be consulted for the particulars of prohibited conduct, as well as for specific exceptions and exemptions.

1. *Code of Ethics for Government Service*

All members and employees shall observe those fundamental principles of conduct in public service declared in House Concurrent Resolution 175, Code of Ethics for Government Service, which states in general terms those concepts of high obligations and responsibilities, as well as rights and privileges, attendant upon service for our Government. (72 Stat. B 12).

2. *Compensation to public officials for claims, contracts, etc.* (18 U.S.C. 203)

No public official shall directly or indirectly receive or solicit compensation for services rendered by himself or herself, or another, in relation to any application, contract, claim, controversy, or other matter in which the United States has a direct and substantial interest.

No person shall knowingly directly or indirectly give, promise, or offer any compensation to a public official for services rendered.

Violation of these prohibitions is punishable by a maximum fine of $10,000, or imprisonment for not more than two years, or both; and removal.

3. *Prosecution of claims against and other matters affecting the Government by officers and employees* (18 U.S.C. 205)

No officer or employee of the United States shall act as agent or attorney, or receive any gratuity, for the prosecution or assistance in the prosecution of any claim against the United States.

No officer or employee of the United States shall act as agent or attorney for anyone in connection with any proceeding, application, contract, controversy or other matter in which the United States has a direct and substantial interest.

Violation of these prohibitions is punishable by a maximum fine of $10,000, or imprisonment for not more than two years, or both.

4. *Post employment conflict of interest* (*18 U.S.C. 207*)

I. GENERAL

A. The Ethics in Government Act (Pub. L. 95-521) (the Act) broadened and added new restrictions to the existing provisions of 18 U.S.C. 207, which generally prohibit a former Government employee from acting as another person's representative to the Government in matters in which the employee had been involved while in the Government. Criminal penalties or fines of not more than $10,000 and imprisonment for not more than two years, as well as administrative sanctions are provided for violation of the Act.

1. *Post-Employment Generally.* It is important to note that nothing in the Act requires a former employee to decline employment with any organization regardless of dealings with that organization while a Government employee.

2. *Required Nexus.* With the exception of the 207(c) bar, what is prohibited depends upon the former employee's degree of involvement in the matter while with the Government and whether he or she was one

of a specified group of high-ranking employees ("Senior Employees").

II. GENERAL RESTRICTIONS APPLICABLE TO ALL FORMER EMPLOYEES

A. *Permanent Bar.* (18 U.S.C. 207(a); 5 CFR 737.5). After leaving Government employment, a former employee may not serve as another person's representative to the Government on a case, contractual matter or other similar application or proceeding, formal or informal, in which he or she participated personally and substantially while a Government employee.

1. There are two important limitations to this prohibition which attacks "switching sides." First, the former employee is not restricted unless the matter in which he or she previously participated was (i) a "particular matter involving specific parties" and (ii) is the same matter in which he or she now attempts to represent another before the Government. Thus, where an employee's prior involvement was limited to, say, the design of program policy, general rulemaking, or technical concepts, he or she is not restricted by this prohibition as to any specific matters which may involve his or her prior work. Second, this bar requires that the employee has been personally involved in the matter in a substantial way.

2. The kind of representation that is restricted includes not only acting as another's attorney or agent, but any other kind of representation or communication made with the intent to influence the United States. This includes promotional and contract representation.

B. *Two-Year Bar.* (18 U.S.C. 207(b)(i); 5 CFR 737.7). This is basically the same bar as above, except that it applies for only two years and covers all particular matters which were actually pending under the former employee's "official responsibility" in his or her last year of Government service. An employee's official responsibility is usually defined by statute, regulation, written delegation of authority or job description.

1. There may be times when a former employee is in doubt as to whether a matter was under his or her official responsibility, whether it is the same "particular matter" as that with which he or she was involved or whether the United States still has an interest in the matter. His or her former agency has an obligation to advise promptly on those questions as provided in the regulations issued by the Office of Personnel Management (5 CFR part 737).

III. RESTRICTIONS APPLICABLE ONLY TO SENIOR EMPLOYEES

A. *Two-Year Bar on Assisting in Representing.* (18 U.S.C. 207(b)(ii); 5 CFR 737.9) For two years after leaving Government employment, a former Senior Employee may not assist in the representation of another person by personal presence at an appearance before the Government on any particular matter in which he or she could not act as the person's actual representative because of his or her substantial personal participation in the matter while in Government.

1. It is important to note that this restriction does not bar a Senior Employee from assisting on a matter in which he or she participated while in Government but only from assisting "in representing" while personally present at a formal or informal appearance. Thus, such employee could work on a contract with which he or she was involved while in Government and could manage a company, institution or university where such former employee's decisions determine the manner in which his or her organization will perform under a Government contract or grant.

B. *One-Year Bar on Attempts to Influence Former Agency.* (18 U.S.C. 207(c); 5 CFR 737.11) For one year after leaving Government employment, a former Senior Employee may not represent anyone in an attempt to influence his or her former agency on a matter before, or of substantial interest to such agency.

1. This "revolving door" provision is different from the previous restrictions in the following ways:

a. It does not require that the former employee have had any prior involvement in the matter.

b. The matters covered are broader; they need not involve specific parties, so the former employee could not, for example, attempt to influence rulemaking or policy formation.

c. It is limited to contact with his or her former agency; he or she may appear before, or act to influence, any other part of the Government in regard to a matter not otherwise covered.

d. The matter must be pending before, or of substantial interest to, his or her former agency.

e. The restriction covers the former employee's self-representation except for those matters outlined in subsection 2 below.

2. There are a number of matters to which the restriction does not apply, among these are:

a. Purely social or informational communications.

b. Transmission of filings which do not require Governmental action.

c. Personal matters.

d. Representing oneself in any judicial or administrative proceeding.

e. Any expression of personal views where the former employee has no pecuniary interest.

f. Response to the former agency's request for information.

g. Participation as the principal research under Government grants.

IV. WHAT IS A SENIOR EMPLOYEE? (18 U.S.C. 207(D); 5 CFR 737.25)

A. There are four groups of Senior Employees, two are named automatically by statute: (i) civilians paid at the Executive Level and (ii) active duty uniformed service officers serving in grade 0-9 and above. Two other groups, (iii) civilians at or equivalent to GS-17 or above and (iv) uniformed service officers in grades 0-7 and 0-8, having significant decision-making or supervisory responsibility, must first be designated by the Director of the Office of Government Ethics (OGE) before they are chargeable as Senior Employees. OGE has designated all Senior Executive Service positions as senior employee positions for purposes of the Act unless exempted by the Director. 5 CFR 737.25(b)(1). A list of current senior employee positions not exempted is found at 5 CFR 737.33.

1. Those automatically covered by the statute were made subject to the Act's special restrictions on Senior Employees as of July 1, 1979.

2. Those designated by the Director, OGE, were covered as of February 28, 1980.

5. *Annual public financial disclosure requirements* (Sections 201-211 of the Ethics in Government Act of 1978)

Each Government officer or employee, whose position is classified at GS-16 or above, shall file with the designated agency official at the agency by which he or she is employed, on or before May 15 of each year, a report containing the following information concerning the preceding calendar year:

(1) The source, type, and amount of earned income from any source other than current employment by the United States Government;

(2) The source, date, and amount of honoraria earned, aggregating $100 or more in value;

(3) The source and type of unearned income received exceeding $100 in amount or value, that amount or value to be listed by category, for example, "not more than $1,000";

(4) The source and a brief description of any gifts of transportation, lodging, food, or entertainment, aggregating $250 or more in value received from any source other than a relative. Items received as personal hospitality or with a fair market value of $35 or less need not be aggregated;

(5) The source and brief description of all other gifts aggregating $100 or more in value. Gifts received from a relative or with a fair market value of $35 or less need not be aggregated;

(6) The source and a brief description of reimbursements received from any source aggregating $250 or more in value;

(7) The identity and category of value of any interest in property held in a business, or for investment or the production of income, which has a fair market value exceeding $1,000;

(8) The identity and category of value of the total liabilities owed to any creditor, other than a relative, which exceeds $10,000 at any time during the preceding year, excluding any mortgage secured by the reporting individual's personal residence, or motor vehicle loan;

(9) The date, category of value, and a brief description of any purchase, sale, or exchange in real property (other than a personal residence), stocks, bonds, and other forms of securities, which exceeds $1,000;

(10) The identity of all positions held with any business enterprise, non-profit organization, labor organization, and educational or other institution. Positions held with any religious, social, or political entity, or of an honorary nature need not be reported;

(11) A description of the date, parties, and terms of any agreement with respect to future employment, leave of absence, continuation of payments by a former employer, and continuing participation in an employee benefit plan;

(12) Required information described in numbers 1 through 9 of this provision shall be included in each report with respect to the spouse and dependent children of the reporting individual, with certain modifications;

(13) A description of holdings of an income from a trust or other financial arrangement. Holdings of or the source of income from any qualified blind trust, as defined in this section, need not be reported, but the individual shall report the category of the amount of income received;

Any report filed under this provision will be available to the public upon request.

Any individual who knowingly and willfully falsifies or fails to file or report required information shall be liable to a maximum civil penalty of $5,000, and personnel or other action in accordance with applicable law or regulation.

6. *Acts affecting a personal financial interest* (18 U.S.C. 208)

No officer or employee of the United States shall participate personally and substantially, through decision, in relation to any judicial or other proceeding, application, contract, claim, controversy, or other matter in which he or she has a direct or indirect financial interest.

Prior full disclosure of financial interest and written determination that such interest is not substantial may permit such participation.

Violation of this prohibition is punishable by a maximum fine of $10,000, or imprisonment for not more than two years, or both.

7. *Unathorized use of documents relating to claims* (18 U.S.C. 285)

No one, without authority, shall remove or use any document prepared, or intended to be used, to procure the payment of any claim against the United States.

Violation of this prohibitions is punishable by a maximum fine of $5,000, or imprisonment for not more than five years, or both.

8. *Salary of government officials and employees payable only by United States* (18 U.S.C. 209)

No official or employee of the United States shall receive compensation for services as an officer or employee of the Government from any source other than the Government of the United States.

No individual or entity shall pay or supplement the salary of any such officer or employee for services as an officer or employee of the United States.

Violation of these prohibition is punishable by a maximum fine of $5,000, or imprisonment for more than one year, or both.

9. *Bribery of public officials* (18 U.S.C. 201)

No person or entity shall directly or indirectly give, offer, or promise anything of value to a public official with intent to: (a) Influence any official act, (b) influence such public official to commit or allow the commission of any fraud on the United States or (c) induce such public official to act in violation of his or her lawful duty.

No public official shall directly or indirectly solicit, accept, or agree to receive anything of value for himself or herself, or another, in return for: (a) Being influenced in the performance of any official act, (b) being influenced to commit or allow the commission of any fraud on the United States, or (c) being induced to act in violation of his or her official duty.

Violation of these prohibitions is punishable by a fine of not more than $20,000 or three times the monetary equivalent of the thing of value, whichever is greater, or a maximum of 15 years' imprisonment, or both; and removal.

10. *Acceptance or solicitation to obtain appointive public office* (18 U.S.C. 211)

No one shall solicit or receive money or anything of value in consideration for assistance in obtaining for any person appointive office or employment with the United States.

Violation of this prohibition is punishable by a maximum fine of $1,000, or imprisonment for not more than one year, or both.

11. *Gifts to superior* (5 U.S.C. 7351)

No employee shall: (a) Solicit a contribution from another employee for a gift to a superior, (b) make a donation as a gift to a superior, or (c) accept a gift from one to whom he or she is an official superior.

Violation of these prohibitions is punishable by a maximum penalty of removal.

12. *Lobbying with appropriated funds* (18 U.S.C. 1913)

No officer or employee of the United States, in the absence of express authorization by Congress, shall use, directly or indirectly, money appropriated by Congress to pay for any personal service, written matter, or other device intended to influence a Member of Congress to favor or oppose any legislation or appropriation by Congress.

Violation of this prohibition is punishable by a maximum fine of $500, or imprisonment for not more than one year, or both; and removal.

13. *Diclosure of confidential information* (18 U.S.C. 1905)

No officer or employee of the United States shall publish, disclose, or make known in any manner or to any extent not authorized by law, any confidential information made known to him or her in the course of his or her employment or official duties.

Violation of this prohibition is punishable by a maximum fine of $1,000, or imprisonment for not more than one year, or both; and removal.

14. *Disclosure of classified information* (18 U.S.C. 798)

No one shall knowingly and willfully communicate or otherwise make available to an unauthorized person, or publish or use in any manner prejudicial to the interest of the United States, any classified information.

Violation of this prohibition is punishable by a maximum fine of $10,000, or imprisonment for not more than ten years, or both.

15. *Excessive and habitual use of intoxicants* (5 U.S.C. 7352)

No individual shall habitually use intoxicating beverages to excess.

Violation of this prohibition is punishable by removal.

16. *Misuse of franking privilege* (18 U.S.C. 1719)

No one shall make use of any official envelope, label, or endorsement authorized by law, to avoid the payment of postage on private letters, packages, or other matters in the mail.

Violation of this prohibition is punishable by a maximum fine of $300.

17. *Interference with Civil Service Examinations* (18 U.S.C. 1917)

No member or employee of the United States Civil Service Commission or an individual in the public service shall willfully and corruptly obstruct an individual in respect of his or her right of examination for competitive service, or falsely grade or report on the examination or proper standing of an individual examined; or make a false representation concerning the examination grade or proper standing of an individual examined; or furnish to an individual any special information for the purpose of improving or harming the prospects of an individual examined, being employed, or promoted.

Violation of these prohibitions is punishable, for each offense, by a maximum fine of $1,000, or imprisonment for not more than one year, or both.

18. *Fraud and false statements* (18 U.S.C. 1001)

No one, concerning any matter within the jurisdiction of the United States, shall knowingly and willfully falsify or conceal a material fact, or make any false, fictitious, or fraudulent statements, or make or use any document knowing such document to contain any false, fictitious, or fraudulent statement.

Violation of these prohibitions is punishable by a maximum fine of $10,000, or imprisonment for not more than five years, or both.

19. *Concealment, mutilation, or destruction of Government documents* (18 U.S.C. 2071)

No one shall willfully and unlawfully conceal, remove, mutilate, falsify, destroy, or intentionally carry away any Government document.

Violation of this prohibition is punishable by a maximum fine of $2,000, or imprisonment for not more than three years, or both. Violation by one having custody of such document shall result in the custodian's removal from office.

20. *Forgery of Government transportation requests* (18 U.S.C. 508)

No one shall forge or counterfeit, knowingly alter, use, or sell any form or request provided by the Government for transportation by common carrier.

Violation of this prohibition is punishable by a maximum fine of $5,000, or imprisonment for not more than ten years, or both.

21. *Misuse of Government vehicles* (31 U.S.C. 638a(c))

No officer or employee of the Government shall willfully use or authorize the use of any Government-owned or leased passenger motor vehicle or aircraft for other than official purposes.

Violation of this prohibition is punishable by a maximum penalty of removal.

22. *Accounting for public money* (18 U.S.C. 643)

An officer or employee of the United States who receives public money which he or she is not authorized to retain as salary must render an account of such money as provided by law.

An officer or employee who fails to render such an account is guilty of embezzlement, and shall be fined a sum equal to the amount of money embezzled, or imprisoned for not more than ten years, or both.

23. *Theft of Government money or property* (18 U.S.C. 641)

No one shall embezzle, steal, or knowingly convert, or, without authority, sell or convey documents, money, or things of value of the United States.

No one shall receive or retain such items knowing them to be embezzled, stolen or converted.

Violation of these prohibitions is punishable by a maximum fine of $10,000, and imprisonment for not more than ten years, or both.

24. *Wrongful conversion of property of another* (18 U.S.C. 654)

No officer or employee of the United States shall embezzle or wrongfully convert to his or her own use money or property of another which comes into his or her control in the execution of such employment of office.

Violation of this prohibition is punishable by a fine of not more than the value of the money or property thus converted, or imprisonment for not more than ten years, or both.

25. *Restrictions on political activities* (5 U.S.C. 7321-7327)

No federal employee shall use his or her official authority or influence for the purpose of interfering with or affecting the result of an election; or shall take an active part in political management, or in political campaigns (5 U.S.C. 7324).

Violation of these prohibitions is punishable by a maximum penalty of removal.

26. *Solicitation of political contributions* (18 U.S.C. 602)

No public official or employee of the United States shall directly or indirectly solicit or receive contributions for any political purpose whatever from any other such officer or employee.

Violation of this prohibition is punishable by a maximum fine of $5,000, or imprisonment for not more than three years, or both.

27. *Solicitation of political contributions in federal buildings* (18 U.S.C. 603)

No one shall solicit or receive any contribution of money or other thing of value for any political purpose in any Federal building.

Violation of this prohibition is punishable by a maximum fine of $5,000, or imprisonment for not more than three years, or both.

28. *Pecuniary interest in regulated carrier* (49 U.S.C. 10301(d), 10306(e), and 10344(e))

No Commission member, administrative law judge, employee board member, or joint board member may have a pecuniary interest in, hold an official relation to, or own stock in or bonds of, a carrier providing transportation by any mode.

29. *Members' outside employment* (49 U.S.C. 10301(d))

A member of the Commission may not engage in another business, vocation, or employment.

30. *Officers and employees acting as agents of foreign principals* (18 U.S.C. 219)

No officer or employee of the United States shall act as an agent of a foreign principal registered under the Foreign Agents Registration Act of 1938, as amended. (22 U.S.C. 611 *et seq.*)

Violation of this prohibition is punishable by a maximum fine of $10,000, or imprisonment for not more than two years, or both.

31. *Striking against the Government* (15 U.S.C. 7311(3), 18 U.S.C. 1918(3))

An individual shall not accept or hold a position in the Government of the United States, if he or she participates in a strike against the Government.

Violation of this prohibition is punishable by a maximum fine of $1,000, or imprisonment for not more than one year and a day, or both.

[44 FR 4610, Jan. 22, 1979. Redesignated and amended at 48 FR 30881, July 5, 1983]

Subpart C—Additional Canons of Conduct for Members

AUTHORITY: Sec. 6, 36 Stat. 915, as amended, secs. 12, 20, 24 Stat. 383, as amended, 386, as amended, sec. 25, 41 Stat. 498, as amended, sec. 220, 49 Stat. 563 as amended, sec. 313, 54 Stat. 944, as amended, sec. 412, 56 Stat. 294, as amended; 45 U.S.C. 29, 49 U.S.C. 12, 20, 26, 320, 913, 1012, 5 CFR Part 735.

SOURCE: 44 FR 4617, Jan. 22, 1979, unless otherwise noted.

§ 1000.736-1 General policy.

Members of the Interstate Commerce Commission should participate in establishing, maintaining, and enforcing, and should themselves observe, high standards of conduct so that the integrity and independence of the Commission may be preserved. The provisions of these canons should be construed and applied to further that objective. Members of the Commission shall observe the standards of personal conduct in the Canons of Conduct for Members and Employees as set forth in subpart B of this part.

§ 1000.736-2 Maintaining independence.

Members should not allow their family, social, or other relationships to influence their official conduct or judgment. They should not lend the prestige of their office to advance the private interests of others; nor should members convey the impression that they are subject to influence by others. Members should not change or tailor their views to appease any particular interest or group.

§ 1000.736-3 Official duties.

(a) Official duties, both administative and adjudicative, should be carried out diligently and impartially. Insofar as it is consistent with the dignity and responsibilities of their official positions, members should maintain contact with the persons outside the agency who may be affected by their functions.

(b) Members have the obligation to urge the Congress, whenever necessary, to amend, modify, or repeal particular parts of the statutes they administer.

(c) The members' decision to investigate should be based only on the facts known to them and the reasonable inferences from those facts. A member should never suggest, vote for, or participate in an investigation for reasons of animus, prejudice, or vindictiveness.

(d) Members have the obligation to adopt rules necessary to carry out the national transportation policy. The rules should not be burdensome; on the other hand, necessary rules should be adopted, modified, or repealed as changing requirements demand.

§ 1000.736-4 Extra-official activities.

Members must not engage in any business, employment, or vocation while in office, nor may they use the power of their offices or the influence of their names to promote the business interests of others. Members may participate in nonbusiness endeavors, such as civic and charitable activities, that do not reflect adversely upon their impartiality or interfere with the performance of official duties.

§ 1000.736-5 Qualification to participate.

Members should disqualify themselves in any matter in which their impartiality might reasonably be questioned. They should weigh carefully the question of their qualification in any matter where they or their relatives or former business associates or clients are involved. If an interested person suggests that a member should disqualify himself or herself in a particular matter because of bias or prejudice, the member shall be the sole judge of his or her own qualification.

Subpart D—Administrative Enforcement of Improper Post-Employment Activity

AUTHORITY: 18 U.S.C. 207(j), 49 U.S.C. 10321 and 5 U.S.C. 553.

SOURCE: 48 FR 30882, July 5, 1983, unless otherwise noted.

§ 1000.737-1 General.

A violation of 18 U.S.C. 207 (See 49 CFR part 1000 subpart B, appendix, paragraph (4)) or the regulations set forth in 5 CFR part 737 may be cause for appropriate administrative action which may be in addition to any penalty prescribed by law. This subpart is established pursuant to the provisions of 18 U.S.C. 207(j) and 5 CFR 737.27 to implement agency procedures for administrative enforcement of post-employment restrictions.

§ 1000.737-2 Initiation of enforcement action.

Information regarding a possible violation of 18 U.S.C. 207 by a former Commissioner or former Commission employee may be brought to the attention of the Commission by filing such information with the Ethics Counselor.

§ 1000.737-3 Review and investigation.

(a) Upon receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information appears non-frivolous, the Ethics Counselor shall forward the information to the Commission with any recommendations he or she may wish to make on administrative action; the Counselor shall also expeditiously provide such information, along with any comments or Commission regulations, to the Director of the Office of Government Ethics and to the Criminal Division, Department of Justice. The Commission shall coordinate any investigation or administrative action with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice communicates to the Commission that it does not intend to initiate criminal prosecution.

(b) Whenever the Commission has determined after appropriate review that there is reasonable cause to believe that a former Commissioner or Commission employee has violated 18 U.S.C. 207, it may designate the matter for an administrative disciplinary proceeding.

§ 1000.737-4 Notice of proceeding and opportunity for a hearing.

(a) Upon designating such matter for an administrative disciplinary proceeding, the Commission shall provide the former Commissioner or former Commission employee with notice of an intention to institute a proceeding and an opportunity for a hearing. Such notice shall include:

(1) A statement of allegations (and the basis thereof) sufficiently detailed to enable the former government employee to prepare an adequate defense;

(2) Notification of the right to a hearing; and

(3) An explanation of the method by which a hearing may be requested.

(b) If such former Commissioner or Commission employee fails to request a hearing within ten (10) calendar days of receipt of the notice or has waived the opportunity for a hearing, the Commission may take such administrative action as outlined in § 1000.737-10, of this subpart. The former employee shall submit a written request for a hearing to the Chairman, Interstate Commerce Commission, 12th and Constitution Ave., NW., Washington, DC 20423.

§ 1000.737-5 Presiding official.

(a) The presiding official at proceedings under this section shall be the Chairman or an individual designated by the Chairman to make an initial decision. This person shall be called the examiner.

(b) The examiner at such proceeding must be a Commissioner, a member of a Review Board, an Administrative Law Judge or an attorney employed by the Commission. An employee selected and appointed as an examiner shall be authorized, in writing, by the Chairman to administer oaths or affirmations under 5 U.S.C. 2903(b)(2). The examiner shall be provided with appropriate administrative and secretarial support.

(c) The examiner shall be impartial. No individual who has participated in any manner in the decision to initiate the proceedings may serve as the examiner in those proceedings.

§ 1000.737-6 Time, date, and place of hearing.

(a) The hearing shall be conducted at a reasonable time, date and place. In setting a hearing date, the examiner shall give due regard to the former government employee's need for adequate time to prepare a defense and an expeditious resolution of allegations that may be damaging to his or her reputation.

(b) Official notice of the time, date and place shall be sent by registered mail, return receipt requested, to the former employee. The mailing shall include a copy of these procedures.

(c) Hearings will be closed unless an open hearing is requested by the former employee. A request for an open hearing shall be made at least ten (10) days prior to the hearing date.

§ 1000.737-7 Hearing rights.

The hearing shall include, at a minimum the following rights for all parties:

(a) To represent oneself or to be represented by counsel;

(b) To introduce and examine witnesses and to submit physical evidence;

(c) To confront and cross-examine adverse witnesses and to submit physical evidence;

(d) To present oral argument; and

(e) To a transcript or recording of proceedings, on request.

§ 1000.737-8 Burden of proof.

In any hearing under this subpart, the Commission shall have the burden of proof and must establish substantial evidence of a violation.

§ 1000.737-9 Hearing decision.

(a) The examiner shall make a determination based exclusively on matters of record in the proceeding, and shall set forth in the decision all findings of fact and conclusions of law relevant to the matters at issue. Copies of the decision shall be furnished promptly to the former employee and his or her counsel.

(b) Within 30 days after the initial decision either party to the proceeding may appeal the decision to the Commission. Unless the Commission orders otherwise, other parties to the proceeding may file comments within 20 days after such appeal is filed, and the party that filed such appeal may file a reply within 10 days after the period for filing comments has expired. The Commission shall base its decision on such appeal solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues.

(c) If the Commission modifies or reverses the initial decision, it shall specify such findings of fact and conclusions of law as are different from those of the presiding official. The Commission's decision to uphold, modify, or reverse the examiner's initial decision shall be the final agency decision on the matter.

§ 1000.737-10 Administrative sanctions.

The Commission may take appropriate action in the case of any individual found in violation of 18 U.S.C. 207 (a), (b) or (c) after a final administrative decision, or in the case of any individual who failed to request a hearing, after having received adequate notice. Appropriate action may include:

(a) Prohibiting the individual from making on behalf of any other person except the United States, any formal or informal appearance before, or with the intent to influence, any oral or written communication to, such department or agency on any matter of business for a period not to exceed five years, which may be accomplished by directing agency employees to refuse to participate in any such communication; or

(b) Taking other appropriate disciplinary action.

§ 1000.737-11 Judicial review.

Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b) or (c) may seek judicial review of the administrative determination in an appropriate United States District Court.

PART 1001—INSPECTION OF RECORDS

Sec.
1001.1 Records available at the Commission's Washington office.
1001.2 Records available at the Commission's regional and detached offices.
1001.3 Certified copies of records, etc.
1001.4 Requests to inspect other records not considered public under 5 U.S.C. 552.
1001.5 Predisclosure notification procedures for confidential commercial information.

AUTHORITY: 5 U.S.C. 552 and 49 U.S.C. 10301 and 10321.

§ 1001.1 Records available at the Commission's Washington office.

The following specific files and records in the custody of the Secretary are available to the public under 49 U.S.C 10303 and may be inspected at the Commission's Washington office upon reasonable request during business hours between 8:30 a.m. and 5:00 p.m., Monday through Friday.

(a) Copies of tariffs, rate schedules, quotations or tenders under 49 U.S.C. 10721(b)(2); classifications, powers of attorney, concurrences, and contracts filed with the Commission pursuant to 49 U.S.C. 10762, 10764, 10765, 10766, 10721.

(b) Annual and other periodic reports filed with the Commission pursuant to 49 U.S.C. 11145.

(c) Annual and other periodic reports, maps, profiles, and other data filed with the Commission pursuant to 49 U.S.C. 10783.

(d) All docket files, including pleadings, depositions, exhibits, transcripts of testimony, recommended and proposed reports, exceptions, briefs, and reports and decisions of the Commission in any proceeding and carrier operating authorities granted in such proceedings. This does not apply to matters arising under 49 U.S.C 10928, Temporary Authority for Motor and Water Carriers, which are filed in a Regional Office until a petition for reconsideration is ripe for decision.

(e) File and index of instruments or documents recorded pursuant to 49 U.S.C 11303.

(f) ICC Manual—Administration.

(5 U.S.C. 553; 49 U.S.C. 10301, 10303)

[46 FR 54948, Nov. 5, 1981]

§ 1001.2 Records available at the Commission's regional and detached offices.

Copies of certain rate schedules, tariffs, reports and operating authorities filed by and applicable to motor and water carriers and household goods freight forwarders, and docket files in matters arising under 49 U.S.C. 10928 are available for inspection at field offices whose locations are set forth in the appendix in this part. These records are available upon reasonable request during its regular business hours, Monday through Friday. Records not available at the field offices may be obtained and inspected in accordance with the provisions of § 1001.1.

[45 FR 3583, Jan. 18, 1980, as amended at 51 FR 44297, Dec. 9, 1986]

§ 1001.3 Certified copies of records, etc.

Copies of and extracts from public records will be certified by the Secretary, under the seal of the Commission. Persons requesting the Commission to prepare such copies should clearly state the material to be copied, and whether it shall be certified. Charges will be made for certification and for the preparation of copies as provided in part 1002 of this chapter.

[32 FR 20008, Dec. 20, 1967]

§ 1001.4 Requests to inspect other records not considered public under 5 U.S.C. 552.

Requests to inspect records other than those now deemed to be of a public nature shall be in writing and addressed to the Freedom of Information Officer. The Freedom of Information Officer shall determine within 10 days of receipt of a request (excepting Saturdays, Sundays, and legal public holidays) whether a requested record will be made available. If the Freedom of Information Officer determines that a request cannot be honored, he must inform the requesting party in writing of this decision and such letter shall contain a detailed explanation of why the requested material cannot be made available and explain to the requesting party his or her right of appeal. If the Freedom of Information Officer rules that such records cannot be made available because they are exempt under the provisions of 5 U.S.C. 552(b), an appeal from such ruling may be addressed to the Chairman. The Chairman's decision shall be administratively final and state the specific exemption(s) contained in 5 U.S.C. 552(b) relied upon for denial. Such an appeal must be filed within 30 days of the date of the Freedom of Information Officer's letter. The Chairman shall act in writing on such appeals within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of any appeal. In unusual circumstances, as set forth in 5 U.S.C. 552(a)(6)(B), the time limit may be extended, by written notice to the person making the particular request, setting forth the reasons for such extension, for no more than 10 working days. If the appeal is denied, the Chairman's order shall notify the requesting party of his or her right to judicial review. Charges shall be made as provided for in § 1002.1(f) of this chapter.

[53 FR 23399, June 22, 1988]

§ 1001.5 Predisclosure notification procedures for confidential commercial information.

(a) *In general.* Confidential commercial information provided to the Commission shall not be disclosed pursuant to a Freedom of Information Act (FOIA) request except in accordance with this section. For such purposes, the following definitions apply:

(1) "Confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to submitters.* The Commission, to the extent permitted by law, shall provide a submitter with prompt written notice of receipt of a FOIA request encompassing its submissions in accordance with paragraph (c) of this section, and except as provided in paragraph (g) of this section. This notice shall either describe the exact nature of the information requested or provide copies of the records themselves.

(c) *When notice is required.* Notice shall be given to a submitter whenever:

(1) The Commission has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm; or

(2) The information has been designated, in good faith by the submitter, as confidential commercial information at the time of submission or a reasonable time thereafter.

Whenever possible, the submitter's claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the company that the information in question is in fact confidential commercial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (b) of this section, the Commission shall afford a submitter a reasonable period of time in which to provide it with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding the requested information.

(2) When notice is given to a submitter under this section, the Commission

also shall notify the requester that it has been provided.

(e) *Notice of intent to disclose.* The Commission shall consider carefully submitter's objections and specific grounds for nondisclosure prior to its determination whether or not to disclose the requested information. Whenever the Commission decides to disclose the information over a submitter's objection, it shall provide the submitter with written notice containing the following:

(1) A description or copy of the information to be disclosed;

(2) The reasons why the submitter's disclosure objections were not sustained; and

(3) A specific disclosure date, which shall be a reasonable number of days after the notice of intent to disclose has been mailed to the submitter.

At the same time that notice of intent to disclose is given to a submitter, the Commission shall notify the requester accordingly.

(f) *Notice of lawsuit.* (1) Whenever a FOIA requester brings legal action seeking to compel disclosure of confidential commercial information, the Commission shall promptly notify the submitter.

(2) Whenever a submitter brings legal action seeking to prevent disclosure of confidential commercial information, the Commission shall promptly notify the requester.

(g) *Exception to notice requirement.* The notice rquirements of this section shall not apply if:

(1) The Commission determines that the information requested should not be disclosed; or

(2) The information already has been published or otherwise officially made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) Disclosure is required by a Commission rule that:

(i) was adopted pursuant to notice and public comment;

(ii) specifies narrow classes or records submitted to the Commission that are to be released; and

(iii) provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm; or

(5) The information requested is not designated by the submitter as exempt from disclosure, when the submitter had an opportunity to do so at the time of submission or within a reasonable time thereafter, unless the Commission has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm; or

(6) The designation made by the submitter in accordance with these regulations appears obviously frivolous; in such case, the Commission must provide the submitter only with written notice of any administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

[54 FR 16368, Apr. 24, 1989]

PART 1002—FEES

Sec.

1002.1 Fees for records search, review, copying, certification, and related services.
1002.2 Filing fees.
1002.3 Updating user fees.

AUTHORITY: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

§ 1002.1 Fees for records search, review, copying, certification, and related services.

Certifications and copies of such tariffs, reports and other public records and documents on file with the Interstate Commerce Commission as may be practicable to furnish, as well as searches and copying of records not considered public under the Freedom of Information Act (5 U.S.C. 552), will be furnished on the following basis:

(a) Certificate of the Secretary, $5.00.

(b) Services involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $19.00 per hour.

(c) Services involved in checking records to be certified to determine authenticity, including the clerical work, etc., incidental thereto, at the rate of $13.00 per hour.

(d) Electrostatic copies of tariffs, reports, and other public documents, at the rate of $0.60 per letter size or legal size exposure. A minimum charge of $3.00 will be made for this service.

(e) The fee for search and copying services requiring ADP processing are as follows:

(1) A fee of $30.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

(2) The fee for port minute time for the search will be set at the current rate set forth in the Commission's contract with its time sharing computer contractor. Information on those charges can be obtained from the Chief, Section of Systems Development, Interstate Commerce Commission, Washington, DC 20423.

(3) Printing shall be charged at the rates of $.10 per page of computer generated output with a minimum charge of $.25. A charge of $30 per reel of magnetic tape will be made if the tape is to be permanently retained by the requestor.

(f) The fees for search, review and copying services for records not considered public under the Freedom of Information Act are as follows:

(1) When records are sought for commercial use, requesters will be assessed the full and reasonable direct costs of document search, review and duplication. A "commercial use" request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(2) When records are not sought for commercial use and a request is made by an educational or noncommercial scientific institution, requesters will be assessed only for the cost of duplication (excluding charges for the first 100 pages). The term "Educational Institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research. The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. They must show that their request is authorized by and under the auspices of a qualifying institution and the records are not sought for a commercial use but, instead, are in furtherance of scholarly or scientific research.

(3) Requesters who are representatives of the news media (persons actively gathering news for an entity that is organized and operated to publish or broadcast news to the public) will be assessed only for the cost of duplication (excluding charges for the first 100 pages) if they can show that their request is not made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered a request for a commercial use.

(4) All other requesters will be assessed fees which recover the full, reasonable direct cost of searching for and duplicating records that are responsive to the request (excluding charges for the first 100 pages of duplication and the first two hours of search time).

(5) All requesters must reasonably describe the records sought.

(6) The search and review hourly fees will be based upon employee grade levels in order to recoup the full, allowable direct costs attributable to their performance of these functions. They are as follows:

Grade	Rate	Grade	Rate
GS-1	$5.75	GS-9	$13.42
GS-2	6.26	GS-10	14.77
GS-3	7.06	GS-11	16.23
GS-4	7.92	GS-12	19.46
GS-5	8.86	GS-13	23.13
GS-6	9.87	GS-14	27.34
GS-7	10.97	GS-15 & over	32.16
GS-8	12.14		

(7) The fee for electrostatic copies shall be $.60 per letter or legal size exposure with a minimum charge of $3.00.

(8) The fee charged for ADP data is set forth in paragraph (e) of this section.

(9) If the cost of collecting any fee would be equal to or greater than the fee itself, it will not be assessed.

(10) A fee may be charged for searches which are not productive and for searches for records or those parts of records which subsequently are determined to be exempt from disclosure.

(11) Interest charges may be assessed on any unpaid bill starting on 31st day following the day on which the billing was sent, at the rate prescribed in Section 3717 of Title 31 U.S.C. and will accrue from the date of the billing. The Debt Collection Act, including disclosure to consumer reporting agencies and the use of collection agencies, will be utilized to encourage payment where appropriate.

(12) If search charges are likely to exceed $25, the requester will be notified of the estimated fees unless requester willingness to pay whatever fee is assessed has been provided in advance. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester agrees in writing to accept the prospective charges.

(13) An advance payment (before work is commenced or continued on a request) may be required if the charges are likely to exceed $250. Requesters who have previously failed to pay a fee charged in timely fashion (i.e. within 30 days of the date of billing) may be required first to pay this amount plus any applicable interest (or demonstrate that the fee has been paid) and then make an advance payment of the full amount of the estimated fee before the new or pending request is processed. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) also will not begin until after a requester has complied with this provision.

(14) Documents shall be furnished without any charge or at a charge reduced below the fees set forth above if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. The following six factors will be employed in determining when such fees shall be waived or reduced:

(i) The subject of the request: Whether the subject of the requester records concerns "the operations or activities of the government";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding";

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(v) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(vi) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

This fee waiver and reduction provision will be implemented in accordance with guidelines issued by the U.S. Department of Justice on April 2, 1987 and entitled "New FOIA Fee Waiver Policy Guidance." A copy of these guidelines may be inspected or obtained from the ICC's Freedom of Information Office, 12th & Constitution Avenue NW., Room 3132, Washington, DC 20423.

(g) Payment for services described in paragraphs (a) through (f) of this section may be made in cash or by postal money order or check payable to the order of the Secretary, Interstate Commerce Commission, Washington, D.C., and forwarded to his office.

(h) Transcript of testimony and of oral argument, or extracts therefrom, may be purchased by the public from the Commission's official reporter. For information regarding the official reporter, contact the Secretary, Interstate Commerce Commission, Washington, DC 20423.

[32 FR 20010, Dec. 20, 1967, as amended at 47 FR 47394, Oct. 26, 1982; 49 FR 18491, May 1, 1984; 49 FR 39548, Oct. 9, 1984; 50 FR 40025, Oct. 1, 1985; 50 FR 41159, Oct. 9, 1985; 52 FR 46481, Dec. 8, 1987; 53 FR 23399, June 22, 1988; 53 FR 33814, Sept. 1, 1988; 54 FR 36030, Aug. 31, 1989; 55 FR 35636, Aug. 31, 1990]

§ 1002.2 Filing fees.

(a) *Manner of payment.* (1) Except as specified in paragraph (a)(2) of this section, all filing fees will be payable at the time and place the application, petition, notice, tariff, contract or other document is tendered for filing.

(2) When emergency temporary operating authority applications [Item 9] and emergency temporary operating authority extensions [Item 10] are initiated by telegram or telephone, the fee or fees are due when the OCCA-95 application is submitted to the appropriate Commission regional office.

(3) Fees will be payable to the Interstate Commerce Commission by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or credit cards (Visa or Master Card).

(b) *Deficiencies.* (1) Any filing that is not accompanied by the appropriate filing fee is deficient.

(2) The Secretary will inform any person who submits a deficient filing that:

(i) Such filing will be rejected, unless the appropriate fee is submitted within a specified time;

(ii) The Commission will not process any filing that is deficient under this paragraph; and

(iii) The date of filing will be deemed the date on which the Commission receives the appropriate fee.

(3) This provision does not preclude a determination that a filing is deficient for any other reason.

(c) *Fees not refundable.* Fees will be assessed for every filing in the type of proceeding listed in the schedule of fees contained in paragraph (f) of this section, subject to the exceptions contained in paragraphs (d) and (e) of this section. After the application, petition, notice, tariff, contract, or other document has been accepted for filing by the Commission, the filing fee will not be refunded, regardless of whether the application, petition, notice, tariff, contract, or other document is granted or approved, denied, dismissed, or withdrawn. If an application, petition, notice, tariff, contract, or other document is rejected by the Commission as incomplete or for some other reason, prior to docketing or acceptance, the fee will be returned. If an application is rejected as incomplete after docketing, the applicant will be given the opportunity to file a replacement application with reference to the fee number assigned to the prior application and no additional fee will be required, but the fee will not be refunded. If an individual exemption proceeding becomes a matter of general applicability and is handled through the rulemaking process, the Commission will refund the filing fee.

(d) *Related or consolidated proceedings.* (1) Separate fees need not be paid on related applications filed by the same applicant which would be the subject of one proceeding.

(2) Each filing of an original or updated notice of intent to engage in compensated intercorporate hauling operations shall be considered a separate filing, and shall be subject to payment as described in paragraph (f)(12) of this section.

(3) Separate fees will be assessed for the filing of temporary operating authority applications as provided in paragraphs (f) (8), (9) and (10) of this section, regardless of whether such applications are related to an application for corresponding permanent operating authority. A separate fee will be assessed for the filing of an application for temporary authority to operate a motor or water carrier as provided in paragraph (f)(24) of this section regardless of whether such application is related to a corresponding transfer proceeding as provided for in para-

graph (f)(25) of this section or a notice of exemption as provided for in paragraph (f)(27) of this section.

(4) The Commission may reject concurrently filed applications, petitions, notices, contracts, or other documents asserted to be related and refund the filing fee if, in its judgment, they embrace two or more severable matters which should be the subject of separate proceedings.

(e) *Waiver of reduction of filing fees.* It is the general policy of the Commission not to waive or reduce filing fees except as described below:

(1) Filing fees are waived for an application or other proceeding which is filed by a federal government agency, or a state or local government entity. For purposes of this section the phrases "federal government agency" or "government entity" do not include a quasi-governmental corporation or government subsidized transportation company.

(2) In extraordinary situations the Commission will accept requests for waivers or fee reductions in accordance with the following procedure:

(i) *When to request.* At the time that a filing is submitted to the Commission the applicant may request a waiver or reduction of the fee prescribed in this part. Such request should be addressed to the Secretary.

(ii) *Basis.* The applicant must show the waiver or reduction of the fee is in the best interest of the public, or that payment of the fee would impose an undue hardship upon the requestor.

(iii) *Commission action.* The Secretary will notify the applicant of the decision to grant or deny the request for waiver or reduction.

(f) *Schedule of filing fees.*

Type of proceedings	Fees
Part I: Non-Rail Applications for Operating Authority or Exemptions	
(1) An application for motor carrier operating authority; a certificate of registration including a certificate of registration for certain foreign carriers; broker authority; water carrier operating or exemption authority; or household goods freight forwarder authority.	$200.
(2) A fitness only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10922(b)(5)(A) to transport food and related products.	100.
(3) A petition to interpret or clarify an operating authority under 49 CFR 1160.64.	2,300.
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plantsite, or the change of a highway name or number.	40.
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923.	150.
(6) An application to remove restriction or broaden unduly narrow authority under 49 CFR 1160.107–1160.114.	250.
(7) An application for authority to deviate from authorized regular route authority under 49 U.S.C. 10923(a).	100.
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928(b).	100.
(9) An application for motor carrier emergency temporary authority under 49 U.S.C. 10928(c)(1).	70.
(10) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 U.S.C. 10928(c)(1) may continue.	19.
(11) Request for name change of carrier, broker, or household goods freight forwarder.	9.
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling including an updated notice required by 49 CFR 1176.4.	60.
(13) A notice of intent to operate under the agricultural co-operative exemption in 49 U.S.C. 10526(a)(5).	60.
(14) [Reserved]	
(15) A joint petition to substitute applicant in a pending operating rights proceeding.	23.
(16) [Reserved]	
Part II: Non-Rail Applications to Discontinue Transportation	
(17) A notice or petition to discontinue ferry service under 49 U.S.C. 109906.	9,300.
(18) A petition to discontinue motor carrier of passenger transportation in one state.	1,000.
(19) [Reserved]	
Part III: Non-Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(20) An application for the pooling or division of traffic.	1,800.
(21) An application involving the purchase, lease, consolidation, merger or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343.	850.

Type of proceedings	Fees
(22) An application for approval of a non-rail rate association agreement. 49 U.S.C. 10706.	11,400.
(23) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	1,900.
(ii) Minor amendment	40.
(24) An application for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349.	200.
(25) An application to transfer or lease a certificate or permit, including a certificate of registration, and a broker's license or change of control of companies holding broker's license 49 U.S.C. 10926, or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544.	200.
(26) An application for approval of a motor vehicle rental contract. 49 CFR 1057.41(d).	150.
(27) A petition for exemption under 49 U.S.C. 11343(e).	200.
(28)–(32) [Reserved]	
Part IV: Rail Applications for Operating Authority	
(33) (i) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	3,000.
(ii) Exempt transaction under 49 CFR 1150.31.	1,100.
(34) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(i).	3,600.
(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(ii).	2,000.
(36)–(37) [Reserved]	
Part V: Rail Applications to Discontinue Transportation Services	
(38) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the North East Rail Service Act bankrupt railroads or exempt abandonments under 49 CFR 1152.50).	3,300.
(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to North East Rail Service Act.	150.
(40) Abandonments filed by bankrupt railroads. 49 CFR 1152.40.	750.
(41) Exempt abandonments. 49 CFR 1152.50.	1,600.
(42) A notice or petition to discontinue passenger train service.	9,300.
(43) [Reserved]	
Part VI: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(44) An application for use of terminal facilities or other applications under 49 U.S.C. 11103.	7,800.
(45) An application for the pooling or division of traffic. 49 U.S.C. 11342.	4,200.
(46) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11343.	
(i) Major transaction	152,900.
(ii) Significant transaction	30,500.
(iii) Minor transaction	2,500.
(iv) Exempt transaction [49 CFR 1080.2(d)].	650
(v) Responsive application	2,500.
(47) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11343	
(i) Major transaction	152,900.
(ii) Significant transaction	30,500.
(iii) Minor transaction	2,500.
(iv) Exempt transaction [49 CFR 1080.2(d)].	650.
(v) Responsive application	2,500.
(48) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11343.	
(i) Major transaction	152,900.
(ii) Significant transaction	30,500.
(iii) Minor transaction	2,500.
(iv) Exempt transaction [49 CFR 1080.2(d)].	650.
(v) Responsive application	2,500.
(49) An application of a carrier or carriers to purchase, lease or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11343.	
(i) Major transaction	152,900.
(ii) Significant transaction	30,500.
(iii) Minor transaction	2,500.
(iv) Exempt transaction [49 CFR 1080.2(d)].	650.
(v) Responsive application	2,500.
(50) An application for a determination of fact of competition. 49 U.S.C. 11321(e)(2) or (b).	30,500.
(51) An application for approval of a rail rate association agreement. 49 U.S.C. 10706.	28,700.
(52) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706	
(i) Significant amendment	5,300.
(ii) Minor amendment	40.
(53) An application for authority to hold a position as officer or director. 49 U.S.C. 11322.	300.
(54) (i) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization; or an application for competitive bidding requirements of Ex Parte No. 158, 49 CFR 1175. 49 U.S.C. 11301.	1,300.

Type of proceedings	Fees
(ii) An exempt transaction under 49 CFR 1175.	600.
(55) A petition for exemption (other than a rulemaking) filed by rail carriers. 49 U.S.C. 10505.	
(i) Financial exemption petitions	2,700.
(ii) Abandonment exemption petitions	2,200.
(iii) Other exemption petitions	1,200.
(56) An application for forced sale of bankrupt railroad lines. 49 CFR 1180.40–49, 45 U.S.C. 915.	1,600.
(57)–(59) [Reserved]	
Part VII: Formal Proceedings	
(60) A complaint alleging unlawful rates or practices of carriers, property brokers or freight forwarders of household goods.	550.
(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates, fares or charges. 49 U.S.C. 10705(f)(1)(A).	3,600.
(62) A petition for declaratory order:	
(i) A petition for declaratory order involving dispute over an existing rate or practice which is comparable to a complaint proceeding.	650.
(ii) All other petitions for declaratory order.	1,200.
(63) Requests for nationwide and regional collectively filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increases.	6,300.
(64) A petition for exemption from filing tariffs by bus carriers.	200.
(65) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A).	2,900.
(66) Petition for review of state regulation of intrastate rates, rules or practices filed by interstate rail carriers. 49 U.S.C. 11501.	1,000.
(67) Petition for review of state regulation of intrastate rates, rules or practices filed by interstate bus carriers. 49 U.S.C. 11501.	1,800.
(68)–(71) [Reserved]	
Part VIII: Informal Proceedings	
(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 (Except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster).	500.
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements.	50.
(74) The filing of tariffs, rate schedules and contracts including supplements.	8 per series transmitted.
(75) Special docket applications from rail and water carriers. (There is no fee for requests involving sums of $25,000 or less).	60.
(76) Informal complaint about rail rate application.	200
(77) (i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BIPD).	3,100.
(ii) An application for original qualification as self-insurer for cargo insurance.	300.
(78) A service fee for insurer, surety or self insurer accepted certificate of insurance, surety bond other instrument submitted in lieu of a broker surety bond. The fee is based on a formula of $10 per accepted certificate of insurance or surety bond as indication of ICC insurance activity. (There is a $50 annual to a minimum; but the minimum does not apply to a instrument submitted in lieu of broker surety bond).	10 per accepted certificate or other instrument submitted in lieu of a broker surety bond.
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR 1057.	300.
(80) A petition for reinstatement of revoked operating authority.	50.
(81)–(82) [Reserved]	
(83) Petition for reinstatement of a dismissed operating rights application.	300.
(84) Filing of documents for recordation. 49 U.S.C. 11303 and 49 CFR 1177.3(c).	15 per document.
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceeding.	1,100.
(86) Informal opinions about rate applications (all modes).	40.
(87)–(95) [Reserved]	
Part IX: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent.	11 per delivery.
(97) Request for service list for proceedings.	8 per list.
(98) Requests for copies of the one-percent carload waybill sample.	100.
(99) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation.	16 per movement verified.
(100) Application fee for Interstate Commerce Commission Practitioners' Exam.	80.

[49 FR 18492, May 1, 1984, as amended at 50 FR 40026, Oct. 1, 1985; 50 FR 41159, Oct. 9, 1985; 50 FR 41899, Oct. 16, 1985; 50 FR 43193, Oct. 24, 1985; 50 FR 47224, Nov. 15, 1985; 51 FR 18589, May 21, 1986; 51 FR 44297, Dec. 9, 1986; 53 FR 33814, Sept. 1, 1988; 54 FR 36030, Aug. 31, 1989; 54 FR 40115, Sept. 29, 1989; 55 FR 35636, Aug. 31, 1990]

§ 1002.3 Updating user fees.

(a) *Update.* Each fee established in this part shall be updated in accordance with this section annually.

(b) *Publication and effective dates.* Updated fees shall be published in the FEDERAL REGISTER and shall become effective 30 days after publication.

(c) *Payment of fees.* Any person submitting a filing for which a fee is established shall pay the fee in effect at the time of the filing.

(d) *Method of updating fees.* Each fee shall be updated by updating the cost components comprising the fee. Cost components shall be updated as follows:

(1) Direct labor costs shall be updated by multiplying base level direct labor costs by percentage changes in average wages and salaries of Commission employees. Base level direct labor costs are direct labor costs determined by the Commission's FY 1983-84 User Fee Cost Study. The base period for measuring changes shall be April 1984.

(2) Operations overhead shall be developed each year on the basis of current relationships existing on a weighted basis, for indirect labor applicable to the first supervisory work centers directly associated with user fee activity. Actual updating of operations overhead will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead costs.

(3)(i) Office general and administrative costs shall be developed each year on the basis of current level costs, i.e., dividing actual office general and administrative costs for the current fiscal year by total office costs for the Offices and Bureaus directly associated with user fee activity. Actual updating of office general and administrative costs will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead and current operations overhead costs.

(ii) Commission general and administrative costs shall be developed each year on the basis of current level costs; i.e., dividing actual Commission general and administrative costs for the current fiscal year by total agency expenses for the current fiscal year. Actual updating of Commission general and administrative costs will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead, operations overhead and office general and administrative costs.

(4) Publication costs shall be adjusted on the basis of known changes in the costs applicable to publication of material in the FEDERAL REGISTER or ICC Register.

(e) *Rounding of updated fees.* Updated fees shall be rounded in the following manner: (1) Fees between $1-$30 will be rounded to the nearest $1; (2) fees between $30-$100 will be rounded to the nearest $10; (3) fees between $100-$999 will be rounded to the nearest $50; and (4) fees above $1,000 will be rounded to the nearest $100. (This rounding procedure excludes copying, printing and search fees.)

[49 FR 18494, May 1, 1984, as amended at 52 FR 46483, Dec. 8, 1987]

PART 1003—LIST OF FORMS

Sec.

1003.1 General information.
1003.2 Motor and water carrier, broker, and household goods freight forwarder forms.
1003.3 Insurance and surety bond forms.
1003.4 Forms for issuance of securities and assumption of obligations.

AUTHORITY: 5 U.S.C. 551(a), 5 U.S.C. 553(1)(c), 49 U.S.C. 10321.

§ 1003.1 General information.

(a) The forms listed in this part are prescribed for various applications under the Interstate Commerce Act and the Commission's regulations contained in subchapters A and B of this chapter.

(b) Other printed forms are prescribed in the Commission's regulations governing accounts, records, and reports contained in subchapter C of this chapter.

(c) All prescribed forms listed in this part and subchapter C include instructions for their completion.

(d) Copies of all prescribed forms except insurance forms are available upon request from the Office of the

Secretary, Publications Unit, Interstate Commerce Commission, Washington, DC 20423.

[50 FR 40028, Oct. 1, 1985]

§ 1003.2 Motor and water carrier, broker, and household goods freight forwarder forms.

BOC-3 Designation of Agent for Service of Process.

This form is required to be filed by all motor carriers and brokers prior to issuance of operating authority. See 49 U.S.C. 10330(b).

Cross Reference: 49 CFR part 1044.

OP-1 (Effective 6/1/90).

Interstate Commerce Commission Authority Application.

Cross Reference: 49 CFR parts 1160 and 1162.

OP-FC-1.

Applications in proceedings (other than those under 49 U.S.C. 11343) for transfer or lease of:

(1) Motor carrier Certificates of Registration issued pursuant to 49 U.S.C. 10931;

(2) Motor common and contract carrier operating rights issued pursuant to 49 U.S.C. 10922 and 10923, respectively;

(3) Property broker licenses issued pursuant to 49 U.S.C. 10924;

(4) Household goods freight forwarder permits issued pursuant to 49 U.S.C. 10923; and

(5) Water common and contract carrier operating rights issued pursuant to 49 U.S.C. 10922 and 10923, respectively.

OP-F-46.

Application for approval, under 49 U.S.C. 11349, of the temporary operation of motor carrier or water carrier properties.

Cross Reference: 49 CFR part 1187.

OP-OR-110.

Application for certificate of exemption under 49 U.S.C. 10525 covering motor carrier operations in interstate or foreign commerce lawfully conducted solely within a single State.

OCCA-19.

Application for extension of emergency temporary authority.

Cross Reference: 49 CFR part 1162.

BOP-79.

Application for approval of contract carrier rental contract.

Cross Reference: 49 CFR 1057.41(d).

OCP-100.

Your Rights and Responsibilities When You Move.

OCP-101.

Annual Performance Report.

Cross Reference: 49 CFR Part 1056.

OCP-102.

Notice to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers Under 49 U.S.C. 10526(a)(5), to be used by cooperative associations or federations of cooperative associations which intend to perform interstate transportation for nonmembers who are neither farmers, other cooperative associations, nor federations of cooperative associations.

Cross Reference: 49 CFR 1047.23.

[50 FR 40028, Oct. 1, 1985, as amended at 51 FR 34219, Sept. 26, 1986; 51 FR 44297, Dec. 9, 1986; 53 FR 4851, Feb. 18, 1988; 54 FR 35343, Aug. 25, 1989; 54 FR 53637, Dec. 29, 1989; 55 FR 38809, Sept. 21, 1990]

§ 1003.3 Insurance and surety bond forms.

B.M.C. 32.

Endorsement for Motor Common Carrier Policies of Insurance for Cargo Liability under section 10927, title 49 of the United States Code.

B.M.C. 34.

Motor Carrier Cargo Liability Certificate of Insurance.

B.M.C. 35.

Notice of Cancellation Motor Carrier Policies of Insurance under 49 U.S.C. 10927.

B.M.C. 36.

Notice of Cancellation Motor Carrier and Broker Surety Bonds.

B.M.C. 40.

Application for Authority to Self-Insurer under 49 U.S.C. 10927.

B.M.C. 82.

Motor Carrier Bodily Injury Liability and Property Damage Liability Surety Bond under 49 U.S.C. 10927.

B.M.C. 83 (Rev. 1976).

Motor Common Carrier Cargo Liability Surety Bond.

B.M.C. 84.

Broker's Surety Bond under Section 49 U.S.C. 10927.

B.M.C. 85.

Broker Trust Fund Agreement under 49 U.S.C. 10927 or Notice of Cancellation of the Agreement.

B.M.C. 90 (Rev. 1982).

Endorsement for Motor Carrier Policies of Insurance for Automobile Bodily Injury and Property Damage Liability under 49 U.S.C. 10927.

B.M.C. 91 (Rev. 1982).

Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance.

B.M.C. 91X (1/1982).

Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance.

Cross Reference: 49 CFR part 1043.

BMC 91MX (1985).

Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance for Foreign Motor Private Carriers of Nonhazardous Commodities.

[50 FR 40028, Oct. 1, 1985, as amended at 50 FR 40030, Oct. 1, 1985; 53 FR 10396, Mar. 31, 1988]

§ 1003.4 Forms for issuance of securities and assumption of obligations.

(a) Application forms:

OP-F-210.

Special application for authority to sell securities without competitive bidding.

(b) Report Forms:

OP-F-220.

Certificate of notification under 49 U.S.C. 11301. Disposal of pledged or Treasury securities.

OP-F-230.

Certificate of notification under 49 U.S.C. 11301. Issuance of short-term notes.

OP-F-240.

Special report under 49 U.S.C. 11301. Issuance of securities or assumption of obligations.

Cross Reference: 49 CFR Part 1175.

[50 FR 40028, Oct. 1, 1985, as amended at 53 FR 10396, Mar. 31, 1988]

PART 1004—INTERPRETATIONS AND ROUTING REGULATIONS

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1004.2 Authority to serve a particular area—construction.
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1004.24 Elimination of gateways—regular- and irregular-route carriers.
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1004.26 Misrouting, adjustment of claims.

AUTHORITY: 49 U.S.C. 10321 and 5 U.S.C. 553. Subpart C also issued under 49 U.S.C. 10922(h)(1)(A).

SOURCE: 53 FR 47219, Nov. 22, 1988, unless otherwise noted.

Subpart A—Interpretation of Operating Rights

§ 1004.1 Return transportation.

A motor carrier may transport containers and other shipping devices inbound if they were used in its outbound transportation of the base commodity.

§ 1004.2 Authority to serve a particular area—construction.

(a) *Service at municipality.* A motor carrier of property, motor passenger carrier of express, and household goods freight forwarder authorized to serve a municipality may serve all points within that municipality's commercial zone not beyond the territorial limits, if any, fixed in such authority.

(b) *Service at unincorporated community.* A motor carrier of property, motor passenger carrier of express, and household goods freight forwarder, authorized to serve an unincorporated community having a post office of the same name, may serve all points in the United States not beyond the territorial limits, if any, fixed in such authority, as follows:

(1) All points within 3 miles of the post office in such unincorporated community if it has a population of less than 2,500; within 4 miles if it has a population of 2,500 but less than 25,000; and within 6 miles if it has a population of 25,000 or more;

(2) At all points in any municipality any part of which is within the limits described in paragraph (b)(1) of this section; and

(3) At all points in any municipality wholly surrounded, or so surrounded except for a water boundary, by any municipality included under the terms of paragraph (b)(2) of this section.

§ 1004.3 Incidental for-hire transportation by private carrier.

A private carrier engaged in incidental for-hire transportation shall conduct such operations independently of its private operations and shall maintain separate records for each.

Subpart B—Miscellaneous Interpretations

§ 1004.10 Gifts, donations, and hospitality by carriers.

It is unlawful for any common carrier engaged in interstate or foreign commerce to offer, make, or cause any undue or unreasonable preference or advantage to any person. Gifts of services or anything of substantial value to particular shippers or their representatives are considered violations of the law. Expenditures for such gifts may not support requests to increase carrier rates. The Commission shall take appropriate enforcement action to redress such unlawful expenditures.

Subpart C—Routing Regulations

§ 1004.20 Regular-route motor passenger service.

(a) A motor common carrier authorized to transport passengers over regular routes may serve: (1) All points on its authorized route; (2) all municipalities wholly within 1 airline mile of its authorized route; (3) all unincorporated areas within 1 airline mile of its authorized route; and (4) all military posts, airports, schools, and similar establishments that may be entered within 1 airline mile of its authorized route, but operations within any part of such establishment more than 1 airline mile from such authorized route may not be over a public road.

(b) This section does not apply to those motor passenger common carriers authorized to operate within:

(1) New York, NY;

(2) Rockland, Westchester, Orange, or Nassau Counties, NY;

(3) Fairfield County, CT; and

(4) Passaic, Bergen, Essex, Hudson, Union, Morris, Somerset, Middlesex, or Monmouth Counties, NJ.

[54 FR 21956, May 22, 1989]

§ 1004.21 Traversal authority.

(a) *Scope.* An irregular-route motor carrier may operate between authorized service points over any reasonably direct or logical route unless expressly prohibited.

(b) *Requirements.* Before commencing operations, the carrier must, regarding each State traversed:

(1) Notify the State regulatory body in writing, attaching a copy of its operating rights;

(2) Designate a process agent; and

(3) Comply with 49 CFR 1043.8.

§ 1004.22 Tacking.

Unless expressly prohibited, a motor common carrier of property holding separate authorities which have common service points may join, or "tack," those authorities at the common point, or "gateway," for the purpose of performing through service as follows:

(a) Regular-route authorities may be tacked with one another;

(b) Regular-route authority may be tacked with irregular-route authority;

(c) Irregular-route authorities may be tacked with one another if the authorities were granted pursuant to applications filed on or before November 23, 1973, and the distance between the points at which service is provided, when measured through the gateway point, is 300 miles or less; and

(d) Irregular-route authorities may be tacked with one another if the authorities involved contain a specific provision granting the right to tack.

§ 1004.23 Elimination of routing restrictions—regular-route carriers.

(a) *Regular-route authorities—construction.* All certificates that, either singly or in combination, authorize the transportation by a motor common carrier of property over:

(1) A single regular route or;

(2) Over two or more regular routes that can lawfully be tacked at a common service point, shall be construed as authorizing transportation between authorized service points over any available route.

(b) *Service at authorized points.* A common carrier departing from its authorized service routes under paragraph (a) of this section shall continue to serve points authorized to be served on or in connection with its authorized service routes.

(c) *Intermediate point service.* A common carrier conducting operations under paragraph (a) of this section may serve points on, and within 1 airline mile of, an alternative route it elects to use if all the following conditions are met:

(1) The carrier is authorized to serve all intermediate points (without regard to nominal restrictions) on the underlying service route;

(2) The alternative route involves the use of a superhighway (*i.e.*, a limited access highway with split-level crossings);

(3) The alternative superhighway route, including highways connecting the superhighway portion of the route with the carrier's authorized service route,

(i) Extends in the same general direction as the carrier's authorized service route and

(ii) Is wholly within 25 airline miles of the carrier's authorized service route; and

(4) Service is provided in the same manner as, and subject to any restrictions that apply to, service over the authorized service route.

§ 1004.24 Elimination of gateways—regular- and irregular-route carriers.

A motor common carrier of property holding separate grants of authority (including regular-route authority), one or more of which authorizes transportation over irregular routes, where the authorities have a common service point at which they can lawfully be tacked to perform through service, may perform such through service over any available route.

§ 1004.25 Redesignated highways.

Where a highway over which a regular-route motor common carrier of property is authorized to operate is assigned a new designation, such as a new number, letter, or name, the carrier shall advise the Commission by letter, and shall provide information concerning the new and the old designation, the points between which the highway is redesignated, and each place where the highway is referred to in the carrier's authority. The new designation of the highway will be shown in the carrier's certificate when the Commission has occasion to reissue it.

§ 1004.26 Misrouting, adjustment of claims.

Carriers should adjust claims for damages resulting from misrouting. Where a carrier admits responsibility for billing, forwarding, or diverting a shipment over a higher rated route than that directed by the shipper or otherwise available, the misrouting carrier should refund the difference to the shipper (or reimburse the delivering carrier, as the case may be). Where the misrouting carrier alleges justification for using the higher rated route, the Commission may, at its discretion and upon appropriate petition, determine or express an advisory opinion on the lawfulness of such routing. This interpretation must not be used to evade or defeat tariff rates or to meet the rate of a competing carrier or route, nor to relieve a shipper from responsibility for routing instructions. Damages caused by misrouting are not overcharges. Therefore, adjustments of claims for misrouting against rail and water carriers are governed by 49 U.S.C. 11706 (c)(1) and (d).

PART 1005—PRINCIPLES AND PRACTICES FOR THE INVESTIGATION AND VOLUNTARY DISPOSITION OF LOSS AND DAMAGE CLAIMS AND PROCESSING SALVAGE

Sec.

1005.1 Applicability of regulations.
1005.2 Filing of claims.
1005.3 Acknowledgement of claims.
1005.4 Investigation of claims.
1005.5 Disposition of claims.
1005.6 Processing of salvage
1005.7 Weight as a measure of loss.

Authority: 24 Stat. 380, 383 as amended, 386; 34 Stat. 595 as amended; 44 Stat. 1450 as amended; 49 Stat. 546 as amended; 550 as amended, 558 as amended, 560 as amended, 561 as amended, 563 as amended; 52 Stat. 1237; 54 Stat. 900, 922, 933, 934 as amended, 935, 944 as amended, 946; 56 Stat. 285, 286, 287, 294 as amended, 295, 297, 746 as amended; 62 Stat. 472; 63 Stat. 486; and 64 Stat. 1114 as amended, 49 U.S.C. 1, 5, 5b, 6, 12. 20, 304, 305, 316, 317, 318, 319, 320, 904, 905, 906, 913, 916, 1003, 1004, 1005, 1009, 1012, 1013, and 1017.

§ 1005.1 Applicability of regulations.

The regulations set forth in this part shall govern the processing of claims for loss, damage, injury, or delay to property transported or accepted for transportation, in interstate or foreign commerce, by each railroad, express company, motor carrier, water carrier, and freight forwarder (hereinafter called carrier), subject to the Interstate Commerce Act.

[46 FR 16224, Mar. 11, 1981]

§ 1005.2 Filing of claims.

(a) *Compliance with regulations.* A claim for loss or damage to baggage or for loss, damage, injury, or delay to cargo, shall not be voluntarily paid by a carrier unless filed, as provided in paragraph (b) of this section, with the receiving or delivering carrier, or carrier issuing the bill of lading, receipt, ticket, or baggage check, or carrier on whose line the alleged loss, damage, injury, or delay occurred, within the specified time limits applicable thereto and as otherwise may be required by law, the terms of the bill of lading or other contract of carriage, and all tariff provisions applicable thereto.

(b) *Minimum filing requirements.* A written or electronic communication (when agreed to by the carrier and shipper or receiver involved) from a claimant, filed with a proper carrier within the time limits specified in the bill of lading or contract of carriage or transportation and: (1) Containing facts sufficient to identify the baggage or shipment (or shipments) of property, (2) asserting liability for alleged loss, damage, injury, or delay, and (3) making claim for the payment of a specified or determinable amount of money, shall be considered as sufficient compliance with the provisions for filing claims embraced in the bill of lading or other contract of carriage; *Provided, however,* That where claims are electronically handled, procedures are established to ensure reasonable carrier access to supporting documents.

(c) *Documents not constituting claims.* Bad order reports, appraisal reports of damage, notations of shortage or damage, or both, on freight bills, delivery receipts, or other documents, or inspection reports issued by carriers or their inspection agencies, whether the extent of loss or damage is indicated in dollars and cents or otherwise, shall, standing alone, not be considered by carriers as sufficient to comply with the minimum claim filing requirements specified in paragraph (b) of this section.

(d) *Claims filed for uncertain amounts.* Whenever a claim is presented against a proper carrier for an uncertain amount, such as "$100 more or less," the carrier against whom such claim is filed shall determine the condition of the baggage or shipment involved at the time of delivery by it, if it was delivered, and shall ascertain as nearly as possible the extent, if any, of the loss or damage for which it may be responsible. It shall not, however, voluntarily pay a claim under such circumstances unless and until a formal claim in writing for a specified or determinable amount of money shall have been filed in accordance with the provisions of paragraph (b) of this section.

(e) *Other claims.* If investigation of a claim develops that one or more other carriers has been presented with a similar claim on the same shipment, the carrier investigating such claim shall communicate with each such other carrier and, prior to any agreement entered into between or among them as to the proper disposition of such claim or claims, shall notify all claimants of the receipt of conflicting or overlapping claims and shall require further substantiation, on the part of each claimant of his title to the property involved or his right with respect to such claim.

[37 FR 4258, Mar. 1, 1972, as amended at 47 FR 12803, Mar. 25, 1982]

§ 1005.3 Acknowledgement of claims.

(a) Each carrier shall, upon receipt in writing or by electronic transmission of a proper claim in the manner and form described in the regulations, acknowledge the receipt of such claim in writing or electronically to the claimant within 30 days after the date of its receipt by the carrier unless the carrier shall have paid or declined such claim in writing or electronically within 30 days of the receipt thereof. The carrier shall indicate in its acknowledgement to the claimant what, if any, additional documentary evidence or other pertinent information may be required by it further to process the claim as its preliminary examination of the claim, as filed, may have revealed.

(b) The carrier shall at the time each claim is received create a separate file and assign thereto a successive claim file number and note that number on all documents filed in support of the claim and all records and correspondence with respect to the claim, including the acknowledgment of receipt. At the time such claim is received the carrier shall cause the date of receipt to be recorded on the face of the claim document, and the date of receipt shall also appear in the carrier's acknowledgment of receipt to the claimant. The carrier shall also cause the claim file number to be noted on the shipping order, if in its possession, and the delivery receipt, if any, covering such shipment, unless the carrier has established an orderly and consistent internal procedure for assuring: (1) That all information contained in shipping orders, delivery receipts, tally sheets, and all other pertinent records made with respect to the transportation of the shipment on which claim is made, is available for examination upon receipt of a claim; (2) that all such records and documents (or true and complete reproductions thereof) are in fact examined in the course of the investigation of the claim (and an appropriate record is made that such examination has in fact taken place); and (3) that such procedures prevent the duplicate or otherwise unlawful payment of claims.

[37 FR 4258, Mar. 1, 1972, as amended at 37 FR 20943, Oct. 10, 1972; 47 FR 12803, Mar. 25, 1982]

§ 1005.4 Investigation of claims.

(a) *Prompt investigation required.* Each claim filed against a carrier in the manner prescribed herein shall be promptly and thoroughly investigated if investigation has not already been made prior to receipt of the claim.

(b) *Supporting documents.* When a necessary part of an investigation, each claim shall be supported by the original bill of lading, evidence of the freight charges, if any, and either the original invoice, a photographic copy of the original invoice, or an exact copy thereof or any extract made therefrom, certified by the claimant to be true and correct with respect to the property and value involved in the claim; or certification of prices or values, with trade or other discounts, allowance, or deductions, of any nature whatsoever and the terms thereof, or depreciation reflected thereon; *Provided, however,* That where property involved in a claim has not been invoiced to the consignee shown on the bill of lading or where an invoice does not show price or value, or where the property involved has been sold, or where the property has been transferred at bookkeeping values only, the carrier shall, before voluntarily paying a claim, require the claimant to establish the destination value in the quantity, shipped, transported, or involved; *Provided, further,* That when supporting documents are determined to be a necessary part of an investigation, the supporting documents are retained by the carriers for possible Commission inspection.

(c) *Verification of Loss.* When an asserted claim for loss of an entire package or an entire shipment cannot be otherwise authenticated upon investigation, the carrier shall obtain from the consignee of the shipment involved a certified statement in writing that the property for which the claim is filed has not been received from any other source.

[37 FR 4258, Mar. 1, 1972, as amended at 37 FR 23909, Nov. 10, 1972; 47 FR 12803, Mar. 25, 1982]

§ 1005.5 Disposition of claims.

(a) Each carrier subject to the Interstate Commerce Act which receives a written or electronically transmitted claim for loss or damage to baggage or for loss, damage, injury, or delay to property transported shall pay, decline, or make a firm compromise settlement offer in writing or electronically to the claimant within 120 days after receipt of the claim by the carrier; *Provided, however,* That, if the claim cannot be processed and disposed of within 120 days after the receipt thereof, the carrier shall at that time and at the expiration of each succeeding 60-day period while the claim remains pending, advise the claimant in writing or electronically of the status of the claim and the reason for the delay in making final disposition thereof and it shall retain a copy of such advice to the claimant in its claim file thereon.

(b) When settling a claim for loss or damage, a common carrier by motor vehicle of household goods as defined in § 1056.1(b)(1) shall use the replacement costs of the lost or damaged item as a base to apply a depreciation factor to arrive at the current actual value of the lost or damaged item: *Provided,* That where an item cannot be replaced or no suitable replacement is obtainable, the proper measure of damages shall be the original costs, augmented by a factor derived from a consumer price index, and adjusted downward by a factor depreciation over average useful life.

[37 FR 4258, Mar. 1, 1972, as amended at 46 FR 16224, Mar. 11, 1981; 47 FR 12803, Mar. 25, 1982]

§ 1005.6 Processing of salvage.

(a) Whenever baggage or material, goods, or other property transported by a carrier subject to the provisions herein contained is damaged or alleged to be damaged and is, as a consequence thereof, not delivered or is rejected or refused upon tender thereof to the owner, consignee, or person entitled to receive such property, the carrier, after giving due notice, whenever practicable to do so, to the owner and other parties that may have an interest therein, and unless advised to the contrary after giving such notice, shall undertake to sell or dispose of such property directly or by the employment of a competent salvage agent. The carrier shall only dispose of the property in a manner that will fairly and equally protect the best interests of all persons having an interest therein. The carrier shall make an itemized record sufficient to identify the property involved so as to be able to correlate it to the shipment or transportation involved, and claim, if any, filed thereon. The carrier also shall assign to each lot of such property a successive lot number and note that lot number on its record of shipment and claim, if any claim is filed thereon.

(b) Whenever disposition of salvage material or goods shall be made directly to an agent or employee of a carrier or through a salvage agent or company in which the carrier or one or more of its directors, officers, or managers has any interest, financial or otherwise, that carrier's salvage records shall fully reflect the particulars of each such transaction or relationship, or both, as the case may be.

(c) Upon receipt of a claim on a shipment on which salvage has been processed in the manner hereinbefore prescribed, the carrier shall record in its claim file thereon the lot number assigned, the amount of money recovered, if any, from the disposition of such property, and the date of transmittal of such money to the person or persons lawfully entitled to receive the same.

[37 FR 4258, Mar. 1972]

§ 1005.7 Weight as a measure of loss.

Where weight is used as a measure of loss in rail transit of scrap iron and steel and actual tare and gross weights are determined at origin and destination, the settlement of claims shall be based upon a comparison of net weights at origin and destination.

[41 FR 25908, June 23, 1976]

PART 1007—RECORDS CONTAINING INFORMATION ABOUT INDIVIDUALS

Sec.
1007.1 Purpose and scope.
1007.2 Definitions.
1007.3 Requests by an individual for information or access.
1007.4 Procedures for identifying the individual making the request.
1007.5 Disclosure of requested information to individuals; fees for copies of records.
1007.6 Disclosure to third parties.
1007.7 Content of systems of records.
1007.8 Amendment of a record.
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1007.10 Information supplied by the Commission when collecting information from an individual.
1007.11 Public notice of records systems.
1007.12 Exemptions.

AUTHORITY: 5 U.S.C. 552, 553, and 559.

SOURCE: 41 FR 3087, Jan. 21, 1976, unless otherwise noted.

§ 1007.1 Purpose and scope.

(a) This part contains the rules of the Interstate Commerce Commission implementing the Privacy Act of 1974 (5 U.S.C. 552a). These rules apply to all records maintained by this Commission which are not excepted or exempted as provided for in § 1007.12, insofar as they contain personal information concerning an individual, identify that individual by name or other symbol and are contained in a system of records from which information is retrieved by the individual's name or identifying symbol. Among the primary purposes of these rules are to permit individuals to determine whether information about them is contained in Commission files and, if so, to obtain access to that information; to establish procedures whereby individuals may have inaccurate and incomplete information corrected; and, to restrict access by unauthorized persons to that information.

(b) In this part the Commission is also exempting certain Commission systems of records from some of the provisions of the Privacy Act of 1974 that would otherwise be applicable to those systems.

§ 1007.2 Definitions.

As used in this part:

Commission means the Interstate Commerce Commission.

Chairman means the Presidentially appointed Commissioner who is the administrative head of the Interstate Commerce Commission.

Privacy Officer refers to the individual designated to process requests and handle various other matters relating to the Commission's implementation of the Privacy Act of 1974.

Individual means a citizen of the United States or an alien lawfully admitted for permanent residence.

Maintain means the maintenance, collection, use, or dissemination (of records).

Record means any item, collection or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

Statistical Record means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of Title 13 of the United States Code.

System of records means a group of any records under the control of the Commission retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Routine use means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose of which the record was compiled.

Agency means any executive department, military department, Government corporation, Government-controlled corporation or other establishment in the Executive Branch of the Government or any independent regulatory agency.

§ 1007.3 Requests by an individual for information or access.

(a) Any individual may request information on whether a system of records maintained by the Commission contains any information pertaining to him or her, or may request access to his or her record or to any information pertaining to him or her which is contained in a system of records. All requests shall be directed to the Privacy Officer, Office of the Managing Director, Interstate Commerce Commission, Twelfth Street and Constitution Avenue NW, Washington, DC 20423.

(b) A request for information or for access to records under this part may be made by mail or in person. The request shall:

(1) Be in writing and signed by the individual making the request; and,

(2) Include the full name of the individual seeking the information or record, along with his or her home and business addresses and telephone numbers.

(c) For each system of records from which information is sought, the request shall:

(1) Specify the title and identifying number as it appears in the system notice published by the Commission;

(2) Provide such additional identifying information, if any, as may be required by the system notice;

(3) Describe the specific information or kind of information sought within that system of records; and,

(4) Set forth any unusual arrangements sought concerning the time, place, or form of access.

(d) The Commission will respond in writing to a request made under this section within ten days (excluding Saturdays, Sundays and legal public holidays) after receipt of the request. If a definitive reply cannot be given within ten days, the request will be acknowledged and an explanation will be given of the status of the request.

(e) The individual either will be notified in writing of where and when he or she may obtain access to the records requested or will be given the name, address and telephone number of the member of the Commission staff with whom he or she should communicate to make further arrangements for access.

§ 1007.4 Procedures for identifying the individual making the request.

When a request for information or for access to records has been made pursuant to § 1007.3, before information is given or access is granted pursuant to § 1007.5 of these rules, the Commission shall require reasonable identification of the person making the request to insure that information is given and records are disclosed only to the proper person.

(a) An individual may establish his identity by:

(1) Submitting with his written request for information or for access to photocopy, two pieces of identification bearing his or her name and signature, one of which shall bear his or her current home or business address; or

(2) Appearing at any office of the Commission during the regular working hours for that office and presenting either:

(i) One piece of identification containing a photograph and signature, such as a driver's license or passport, or, in the case of a Commission employee, his or her ICC identification card; or

(ii) Two pieces of identification bearing the individual's name and signature, one of which shows the individual's current home or business address; and

(3) Providing such other proof of identity as the Commission deems satisfactory in the circumstances of a particular request.

(b) Nothing in this section shall preclude the Commission from requiring additional identification before granting access to the records if there is reason to believe that the person making the request may not be the individual to whom the record pertains, or where the sensitivity of the data may warrant.

(c) The requirements of this subsection shall not apply if the records involved would be available to any person under the Freedom of Information Act.

§ 1007.5 Disclosure of requested information to individuals; fees for copies of records.

(a) Any individual who has requested access to his or her record or to any information pertaining to that individual in the manner prescribed in § 1007.3 and has identified himself or herself as prescribed in § 1007.4 shall be permitted to review the record and have a copy made of all or any portion thereof in a form comprehensible to the individual, subject to fees for copying services set forth in paragraph (f) of this section. Upon request, persons of the individual's own choosing may accompany the individual, provided that the individual has furnished a written statement authorizing discussion of his or her record in the accompanying person's presence.

(b) Access will generally be granted in the office of the Commission where the records are maintained during normal business hours, but for good cause shown the Commission may grant access at another office of the Commission or at different times for the convenience of the individual making the request. When a request for access is from a Commission employee, this request may be granted by forwarding the information desired through registered mail, return receipt requested.

(c) Where a document containing information about an individual also contains information not pertaining to him or her, the portion not pertaining to the individual shall not be disclosed except to the extent the information is available to any person under the Freedom of Information Act. If the records sought cannot be provided for review and copying in a meaningful form, the Commission shall provide to the individual a summary of the information concerning the individual contained in the record or records which shall be complete and accurate in all material aspects.

(d) Where the disclosure involves medical records, the Privacy Officer may determine that such information will be provided only to a physician designated by the individual.

(e) Requests for copies of documents may be directed to the Privacy Officer or to the member of the Commission's staff through whom arrangements for access were made.

(f) Fees for copies of records shall be charged at the rate set forth in 49 CFR 1002.1(d). Fees for requests requiring the use of a computer shall be charged at the actual cost for machine time. Payment should be made by check or money order payable to the Treasury of the United States. When it is determined to be in the best interest of the public, the Privacy Officer may waive the fee provision.

(g) Nothing in this subsection or in § 1007.3 shall:

(1) Require the disclosure of records exempted under § 1007.12 of these rules, including the exemption relating to investigative records;

(2) Allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding or a criminal proceeding; or,

(3) Require the furnishing of information or records which in the regular course of business cannot be retrieved by the name or other identifier of the individual making the request.

[41 FR 3087, Jan. 21, 1976, as amended at 53 FR 46483, Dec. 8, 1987]

§ 1007.6 Disclosure to third parties.

(a) The Commission shall not disclose to any agency or to any person by any means of communication a record pertaining to an individual which is contained in a system of records, except under the following circumstances:

(1) The individual to whom the record pertains has given his written consent to the disclosure;

(2) The disclosure is to officers and employees of the Commission who need it in the performance of their duties;

(3) Disclosure is required under the Freedom of Information Act (5 U.S.C. 552).

(4) Disclosure is for a routine use as defined in § 1007.2 of these rules and described in the system notice for that system of records;

(5) The disclosure is made to the Bureau of the Census for the purposes of planning or carrying out a census or survey or related activity;

(6) The disclosure is made to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(7) The disclosure is made to another agency or to an instrumentality of any Governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency or instrumentality has made a written request to the Commission specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) The disclosure is made to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value.

(9) The disclosure is made to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(10) The disclosure is made to either House of Congress, or, to the extent of matter(s) within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(11) The disclosure is made to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or,

(12) Pursuant to the order of a court of competent jurisdiction.

(b) The Commission, with respect to each system of records under its control, shall keep for at least five years an accurate accounting of certain disclosures:

(1) A record shall be kept of all disclosures made under paragraph (a) of this section, except disclosures made with the consent of the individual to whom the record pertains (paragraph (a)(1) of this section), disclosures to authorized employees (paragraph (a)(2) of this section), and disclosures required under the Freedom of Information Act (paragraph (a)(3) of this section).

(2) The record shall include:

(i) The date, nature, and purpose of each disclosure of a record made to any person or to another agency;

(ii) The name and address of the person or agency to whom the disclosure was made.

(c) The accounting described in paragraph (b) of this section will be made available to the individual named in the record upon his written request, directed to the Privacy Officer, Interstate Commerce Commission, Twelfth Street and Constitution Avenue NW., Washington, DC 20423, except that the accounting will not be revealed with respect to disclosures made under paragraph (a)(7) of this § 1107.6 pertaining to law enforcement activity, and will not be maintained as to disclosures involving systems of records exempted under § 1007.12.

(d) Whenever an amendment or correction of a record or a notation of dispute concerning the accuracy of records is made by the Commission in accordance with §§ 1007.8 and 1007.9, the Commission will inform any person or other agency to whom the record was previously disclosed, if an accounting of the disclosure was made pursuant to the requirements of paragraph (b) of this section.

§ 1007.7 Content of systems of records.

(a) The Commission will maintain in its records only such information about an individual as is relevant and necessary to accomplish the purposes of the Interstate Commerce Act and other purposes required to be accomplished by statute or by Executive Order of the President.

(b) The Commission will maintain no record describing how any individual exercises rights guaranteed by the First Amendment of the United States Constitution unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(c) The Commission will collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs.

(d) The Commission will maintain all records which are used by the Commission in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

§ 1007.8 Amendment of a record.

(a) Any individual may request amendment of information pertaining to him which is contained in a system of records maintained by the Commission and which is filed under his name or other individual identifier if he believes the information is not accurate, relevant, timely or complete. A request for amendment shall be directed to the Privacy Officer.

(b) A request for amendment may be made by mail or in person and shall: (1) Be in writing and signed by the person making the request; (2) describe the particular record to be amended with sufficient specificity to permit the record to be located among those maintained by the Commission; and (3) specify the nature of the amendment sought and the justification for the requested change. The person making the request may be required to provide the information specified in §§ 1007.3 and 1007.4 in order to simplify identification of the record and permit verification of the identity of the person making the request for amendment.

(c) Receipt of a request for amendment will be acknowledged in writing within ten days (excluding Saturdays, Sundays and legal public holidays); except that if the individual is given notice within the ten-day period that his or her request will or will not be complied with, no acknowledgement is required.

(d) Assistance in preparing a request to amend a record may be obtained from the Privacy Officer, Office of the Managing Director, Interstate Commerce Commission, Twelfth Street and Constitution Avenue NW., Washington, DC 20423.

(e) Upon receipt of a request for amendment the Privacy Officer or a person designated by him shall promptly determine whether the record is materially inaccurate, incomplete, misleading, or is irrelevant or not timely, as claimed by the individual, and, if so, shall cause the record to be amended in accordance with the individual's request.

(f) If the Privacy Officer or designee grants the request to amend the record, the individual shall promptly be advised of the decision and of the action taken, and notice shall be given of the correction and its substance to each person or agency to whom the record had previously been disclosed, as shown on the record of disclosures maintained in accordance with § 1007.6(b).

(g) If the Privacy Officer or designee disagrees in whole or in part with a request for amendment of a record, the individual shall promptly be notified of the complete or partial denial of his request and the reasons for the refusal. The individual shall also be notified of the procedures for administrative review by the Chairman of any complete or partial denial of a request for amendment, which are set forth in § 1007.9.

(h) If a request is received for amendment of a record prepared by another agency which is in the possession or control of the Commission, the request for amendment will be forwarded to that agency. If that agency determines that the correction should be made, the Commission will amend its records accordingly and notify the individual making the request for amendment of the change. If the other agency declines to make the amendment, the Privacy Officer or designee will independently determine whether the amendment will be made to the record in the Commission's possession or control, considering any explanation given by the other agency for its decision.

§ 1007.9 Appeals to the Chairman.

(a) Any individual may petition the Chairman:

(1) To review a refusal to comply with an individual request for access to records pursuant to the Privacy Act (5 U.S.C. 552a(d)(1)), and §§ 1007.3 and 1007.5 in this part;

(2) To review denial of a request for amendment made pursuant to § 1007.8;

(3) To correct any determination that may have been made adverse to the individual based in whole or in part upon inaccurate, irrelevant, untimely or incomplete information; and,

(4) To correct a failure to comply with any other provision of the Privacy Act and the rules of this Part 1007, which has had an adverse effect on the individual.

(b) The petition to the Chairman shall be in writing and shall: (1) State in what manner it is claimed the Commission or any Commission employee has failed or refused to comply with provisions of the Privacy Act or of the rules contained in this part 1007, and (2) set forth the corrective action the petitioner wishes the Commission to take. The petitioner may, if he or she wishes, state such facts and cite such legal or other authorities as are considered appropriate.

(c) The Chairman will make a determination of any petition filed pursuant to this subsection within thirty days (excluding Saturdays, Sundays and legal public holidays) after receipt of the petition, unless for good cause shown, the Chairman extends the 30-day period. If a petition is denied, the petitioner will be notified in writing of the reasons for such denial, and the provisions for judicial review of that determination which are set forth in section 552a(g) (1)(A) and (2)(A), of Title 5 of the United States Code and the provisions for disputed records set forth in paragraph (d) of this section.

(d) If, after review, the Chairman declines to amend the records as the individual has requested, the individual may file with the Privacy Officer a concise statement setting forth why he or she disagrees with the Chairman's denial of the request. Any subsequent disclosure containing information about which a statement of disagreement has been filed shall clearly note the portion which is disputed and include a copy of a concise statement explaining its reasons for not making the amendments requested. Prior recipients of the disputed record will be provided a copy of any statement of dispute to the extent that an accounting of disclosures was maintained.

§ 1007.10 Information supplied by the Commission when collecting information from an individual.

The Commission will inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual, of:

(a) The authority which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(b) The principal purpose or purposes for which the information is intended to be used;

(c) The routine uses which may be made of the information, as published in the FEDERAL REGISTER; and,

(d) The effects on the individual of not providing all or any part of the requested information.

§ 1007.11 Public notice of records systems.

(a) The Commission will publish in the FEDERAL REGISTER, at least annually, a notice of the existence and character of each of its system of records, which notice shall include:

(1) The name and location of the system;

(2) The categories of individuals on whom records are maintained in the system;

(3) The categories of records maintained in the system;

(4) Each routine use of the records contained in the system, including the

categories of users and purpose of such use;

(5) The policies and practices of the Commission regarding storage, retrieval, access controls, retention, and disposal of the records;

(6) The title and business address of the Commission official who is responsible for the system of records;

(7) The procedures whereby an individual can be notified at his or her request if the system of records contains a record pertaining to that individual;

(8) The procedures whereby an individual can be notified at his or her request how he or she can gain access to any record pertaining to that individual contained in the system of records, and how the content of the record can be contested; and,

(9) The categories of sources of records in the system.

(b) Copies of the notices as printed in the FEDERAL REGISTER will be available in each office of the Commission. Mail requests should be directed to the Privacy Officer, Office of the Managing Director, Interstate Commerce Commission, Twelfth Street and Constitution Avenue NW., Washington, DC 20423. The first copy will be provided free of charge; additional copies are subject to charge provided for in paragraph (e) of this § 1007.5.

§ 1007.12 Exemptions.

(a) Investigatory materials compiled for law enforcement purposes are exempt from portions of the Privacy Act of 1974 and of these rules on the basis and to the extent that individual access to these files could impair the effectiveness and orderly conduct of the Commission's enforcement program. *Provided, however,* That if any individual is denied any right, privilege, or benefit to which he or she would otherwise be entitled by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of such material, such materials shall be provided to the individual; except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

(b) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for employment with or contracts with the Commission are exempt from portions of the Privacy Act of 1974 and of these rules to the extent that it identifies a confidential source. This is done in order to encourage persons from whom information is sought to provide information to the Commission which, absent assurances of confidentiality, they might otherwise be unwilling to give. However, if practicable, material identifying a confidential source shall be extracted or summarized in a manner which protects the source, and the summary or extract shall be provided to the requesting individual.

PART 1008—PROCEDURES GOVERNING THE PROCESSING, INVESTIGATION, AND DISPOSITION OF OVERCHARGE, DUPLICATE PAYMENT, OR OVERCOLLECTION CLAIMS

Sec.
1008.1 Applicability.
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1008.9 Disposition of unidentified payments, overcharges, duplicate payments, and overcollections not supported by claims.

AUTHORITY: 49 U.S.C. 10321, 11101, 11705, 11706; 5 U.S.C. 553 and 559.

SOURCE: 43 FR 41040, Sept. 14, 1978, unless otherwise noted.

§ 1008.1 Applicability.

The regulations set forth in this part govern the processing of claims for overcharge, duplicate payment, or overcollection for the transportation of property in interstate or foreign commerce by motor common carriers and household goods freight forwarders subject to part II or IV of the Interstate Commerce Act.

[43 FR 41040, Sept. 14, 1978, as amended at 51 FR 44297, Dec. 9, 1986]

§ 1008.2 Definitions.

(a) "Carrier" means a motor common carrier or household goods freight forwarder subject to part II or IV or the Interstate Commerce Act.

(b) "Overcharge" means an overcharge as defined in section 11705(b)(1) of the Interstate Commerce Act. It also includes duplicate payments as defined in paragraph (c) of this section and overcollections as defined in paragraph (d) of this section when a dispute exists between the parties concerning such charges.

(c) "Duplicate payment" means two or more payments for transporting the same shipment. Where one or more payment is not in the exact amount of the applicable tariff rates and charges, refunds shall be made on the basis of the excess amount over the applicable tariff rates and charges.

(d) "Overcollection" means the receipt by a household goods carrier of a payment in excess of the transportation and/or accessorial charges applicable to a particular shipment of household goods, as defined in part 1056 of this chapter, under tariffs lawfully on file with this Commission.

(e) "Unidentified payment" means a payment which a carrier has received but which the carrier is unable to match with its open accounts receivable or otherwise identify as being due for the performance of transportation services.

(f) "Claimant" means any shipper or receiver, or its authorized agent, filing a request with a carrier for the refund of an overcharge, duplicate payment, or overcollection.

[43 FR 41040, Sept. 14, 1978, as amended at 44 FR 66832, Nov. 21, 1979; 51 FR 34989, Oct. 1, 1986; 51 FR 44297, Dec. 9, 1986]

§ 1008.3 Filing and processing claims.

(a) A claim for overcharge, duplicate payment, or overcollection shall not be paid unless filed in writing or electronically communicated (when agreed to by the carrier and shipper or receiver involved) with the carrier that collected the transportation charges. The collecting carrier shall be the carrier to process all such claims. When a claim is filed with another carrier that participated in the transportation, that carrier shall transmit the claim to the collecting carrier within 15 days after receipt of the claim. If the collecting carrier is unable to dispose of the claim for any reason, the claim may be filed with or transferred to any participating carrier for final disposition.

(b) A single claim may include more than one shipment provided the claim on each shipment involves:

(1) The same tariff issue or authority or circumstances,

(2) Single line service by the same carrier, or

(3) Service by the same interline carriers.

[43 FR 41040, Sept 14, 1978, as amended at 47 FR 12804, Mar. 25, 1982]

§ 1008.4 Documentation of claims.

(a) Claims for overcharge, duplicate payment, or overcollection shall be accompanied by sufficient information to allow the carriers to conduct an investigation and pay or decline the claim within the time limitations set forth in § 1008.8. Claims shall include the name of the claimant, its file number, if any, and the amount of the refund sought to be recovered, if known.

(b) Except when the original freight bill is not a paper document but is electronically transmitted, claims for overcharge shall be accompanied by the original freight bill. Additional information may include, but is not limited to, the following:

(1) The rate, classification, or commodity description or weight claimed to have been applicable.

(2) Complete tariff authority for the rate, classification, or commodity description claimed.

(3) Freight bill payment information.

(4) Other documents or data which is believed by claimant to substantiate the basis for its claim.

(c) Claims for duplicate payment and overcollection shall be accompanied by the original freight bill(s) for which charges were paid (except when the original freight bill is not a paper document but is electronically transmitted) and by freight bill payment information.

(d) Regardless of the provisions of paragraphs (a), (b), and (c) of this section, the failure to provide sufficient information and documentation to allow a carrier to conduct an investigation and pay or decline the claim within the allowable time limitation shall not constitute grounds for disallowance of the claim. Rather, the carrier shall comply with § 1008.5(c) to obtain the additional information required.

(e) A carrier shall accept copies instead of the orginal documents required to be submitted in this section where the carrier is furnished with an agreement entered into by the claimant which indemnifies the carrier for subsequent duplicate claims which might be filed and supported by the original documents.

[43 FR 41040, Sept. 14, 1978, as amended at 44 FR 4679, Jan. 23, 1979; 47 FR 12804, Mar. 25, 1982]

§ 1008.5 Investigation of claims.

(a) Upon receipt of a claim, whether written or otherwise, the processing carrier shall promptly initiate an investigation and establish a file, as required by § 1008.6.

(b) If a carrier discovers an overcharge, duplicate payment, or overcollection which has not been the subject of a claim, it shall promptly initiate an investigation and comply with the provisions in § 1008.9.

(c) In the event the carrier processing the claim requires information or documents in addition to that submitted with the claim, the carrier shall promptly notify the claimant and request the information required. This includes notifying the claimant that a written or electronically transmitted claim must be filed before the carrier becomes subject to the time limits for settling such a claim under § 1008.8.

[43 FR 41040, Sept. 14, 1978, as amended at 47 FR 12804, Mar. 25, 1982]

§ 1008.6 Claim records.

At the time a claim is received the carrier shall create a separate file and assign it a successive claim file number and note that number on all documents filed in support of the claim and all records and correspondence with respect to the claim, including the written or electronic acknowledgment of receipt required under § 1008.7. If pertinent to the disposition of the claim, the carrier shall also note that number on the shipping order and delivery receipt, if any, covering the shipment involved.

[47 FR 12804, Mar. 25, 1982]

§ 1008.7 Acknowledgment of claims.

Upon receipt of a written or electronically transmitted claim, the carrier shall acknowledge its receipt in writing or electronically to the claimant within 30 days after the date of receipt except when the carrier shall have paid or declined in writing or electronically within that period. The carrier shall include the date of receipt in its written or electronic claim which shall be placed in the file for that claim.

[47 FR 12804, Mar. 25, 1982]

§ 1008.8 Disposition of claims.

The processing carrier shall pay, decline to pay, or settle each written or electronically communicated claim within 60 days after its receipt by that carrier, except where the claimant and the carrier agree in writing or electronically to a specific extension based upon extenuating circumstances. If the carrier declines to pay a claim or makes settlement in an amount different from that sought, the carrier shall notify the claimant in writing or electronically, of the reason(s) for its action, citing tariff authority or other pertinent information developed as a result of its investigation.

[47 FR 12804, Mar. 25, 1982]

§ 1008.9 Disposition of unidentified payments, overcharges, duplicate payments, and overcollections not supported by claims.

(a)(1) Carriers shall establish procedures for identifying and properly applying all unidentified payments. If a carrier does not have sufficient information with which properly to apply such a payment, the carrier shall notify the payor of the unidentified payment within 60 days of receipt of the payment and request information which will enable it to identify the payment. If the carrier does not receive the information requested within 90 days from the date of the notice, the carrier may treat the unidentified payment as a payment in fact of freight charges owing to it. Following the 90-day period, the regular claims procedure under this part shall be applicable.

(2) Notice shall be in writing and clearly indicate that it is a final notice and not a bill. Notice shall include: The check number, amount, and date; the payor's name; and any additional basic information the carrier is able to provide. The final notice also must inform payor that: (i) Applicable regulations allow the carrier to conditionally retain the payment as revenue in the absence of a timely response by the payor; and (ii) following the 90-day period the regular claims procedure shall be applicable.

(3) Upon a carrier's receipt of information from the payor, the carrier shall, within 14 days: (i) Make a complete refund of such funds to the payor; or (ii) notify the payor that the information supplied is not sufficient to identify the unapplied payment and request additional information; or (iii) notify the payor of the carrier's determination that such payment was applicable to particular freight charges lawfully due the carrier. Where no refund is made by the carrier, the carrier shall advise the payor of its right to file a formal claim for refund with the carrier in accordance with the regular claims procedure under this part.

(b) When a carrier which participates in a transportation movement, but did not collect the transporation charges, finds that an overpayment has been made, that carrier shall immediately notify the collecting carrier. When the collecting carrier (when single or joint line haul) discovers or is notified by such a participating carrier that an overcharge, duplicate payment, or overcollection exists for any tranportation charge which has not been the subject of a claim, the carrier shall create a file as if a claim had been submitted and shall record in the file the date it discovered or was notified of the overpayment. The carrier that collected the charges shall then refund the amount of the overpayment to the person who paid the transportation charges or to the person that made duplicate payment within 30 days from the date of such discovery or notification.

[43 FR 41040, Sept. 14, 1978, as amended at 44 FR 66832, Nov. 21, 1979]

PART 1010—COMPETITIVE BIDS

Sec.

1010.1 Specifications, form of proposal and contract; publication of request for bids; variation from the generally applicable procedure.
1010.2 Opening of bids; bonds; form and contents of bids.
1010.3 Considerations for acceptance of bids; rejection; readvertising for new bids.
1010.4 Statement of the transaction.
1010.5 Examination.
1010.7 Carriers subject to the Interstate Commerce Act.

AUTHORITY: Sec. 10, 38 Stat. 734; 15 U.S.C. 20.

SOURCE: 32 FR 20013, Dec. 20, 1967, unless otherwise noted.

§ 1010.1 Specifications, form of proposal and contract; publication of request for bids; variation from the generally applicable procedure.

(a) When any carrier, subject to the Interstate Commerce Act, is required by section 10 of the Clayton Antitrust Act (38 Stat. 734; 15 U.S.C. 20) to call for bids for securities, supplies, or other articles of commerce, or for the construction or maintenance of any kind or part of its carrier property such carrier shall prepare specifications, form of proposals and contract, setting forth clearly and so far as applicable in each case in detail a description or descriptions of the matters and things for which bids are requested, the terms, times and conditions of delivery and payment, the place or places where delivery or performance is to be made, the character, amount, and terms of securities offered or sought, and a full description of the supplies or other articles required or offered for sale, hypothecation, or purchase, and shall make and attach to such specifications such maps, drawings, and illustrations and state such other substantial facts or conditions as are or may be necessary to a full understanding of the premises and procedure by bidders. Such specifications, drawings and illustrations in each case shall be kept open at the principal office or offices of the carrier for full examination, free of charges, by persons desiring to examine the same with a view to bidding, and, upon request, such carrier shall furnish to any person or persons desiring the same true and accurate copies of such specifications, maps, drawings and illustrations; *Provided*, That the carrier may make a charge for such copies so furnished, the charge not to exceed the reasonable cost of making and forwarding the copies requested.

(b) The carrier shall publish in each case a request for bids in at least two daily newspapers of general circulation, at least two publications in each week for 2 weeks, the first publication to be at least 2 weeks immediately preceding the day when the bids are to be submitted; one such newspaper shall be published or shall be of general circulation in the city or town where the principal operating office of the carrier is located and the other newspaper shall be published in one other of the following cities nearest to the operating or financial office of the carrier or the place where the contract is to be performed, namely: New York, NY, Boston, Mass., Chicago, Ill., St. Louis, Mo., Atlanta, Ga., San Francisco, Calif., and Portland, Oreg.; and a printed copy of the published notice in each case shall be posted in plain view, for 2 weeks immediately preceding the day on which bids are to be received, on a bulletin board, designated for that purpose, in a public and conspicuous place in the building where the principal operating office of the carrier is located.

(1) Such published notices shall describe in general but intelligible terms the proposed contract, giving its serial number, and the special matter or things for which bids are requested, and the date and time at or before which the bids must be submitted, and the person by whom and the office at which the bids submitted will be received and opened as provided in this part. The carrier may in said notice reserve the right to reject, any and all bids and may, at its option, require each bidder to tender a bond in a reasonable sum to be therein named, with sufficient surety or sureties conditioned upon the faithful and prompt performance of the terms of the contract.

(c) Upon application, a carrier owned or operated by any state or by an agency of one or more states, or a wholly-owned subsidiary corporation thereof, may be authorized by the Commission to employ a competitive bidding procedure or procedures varying from the generally applicable procedure provided by this regulation upon the following showing:

(1) That the applicant carrier is owned or operated by a state or by an agency of one or more states, or is a wholly-owned subsidiary corporation thereof;

(2) A detailed statement of the procedure for which authorization is requested and the variations thereof from the generally applicable procedure provided by this regulation and the purpose or reason for such variation; and

(3) That the generally applicable procedure provided by this regulation imposes on the carrier an unreasonable burden or interferes with obtaining by the carrier of the most favorable bid.

(Secs. 201-227, 49 Stat. 543-567, as amended; 49 U.S.C. 301-327; sec. 12, 24 Stat. 383, as amended; sec. 20, 24 Stat. 386, as amended, 49 U.S.C. 12, 20)

[32 FR 20013, Dec. 20, 1967, as amended at 40 FR 56669, Dec. 4, 1975]

§ 1010.2 Opening of bids; bonds; form and contents of bids.

(a) Every bid to receive consideration shall be submitted at the place and at or before the hour specified in the notice for the receipt of bids. The time specified may be any hour from 10:00 a.m. until 3:00 p.m. of any business day, and the bids shall be opened after the specified hour and before six o'clock on the day and at place and by the person or persons designated in the notice. Each bidder may attend in person or by duly authorized representative at the opening of the bids, and shall be afforded an opportunity to do so and to examine each bid. The bids shall forthwith be tabulated in conformity with the form of proposal prepared and a copy of such tabulation shall be promptly furnished to any bidder or his authorized representative upon application therefor.

(b) When required by the notice, each bid shall be accompanied by tender of a bond in the amount specified in the notice with sufficient surety or sureties conditioned upon the faithful and prompt performance of the proposed contract. A bond shall be required only in cases where the notice for bids expressly calls for a bond.

(c) Each bid shall be enclosed with accompanying papers in a plain envelope securely sealed bearing no indication of the name of the bidder or the amount of the bid, and shall be marked "Bid under proposed contract No. —," and shall be addressed to the officer of the carrier designated in the notice to receive the name.

(d) Each bid shall state the name and address of the bidder and, if the bidder be a corporation, the names and addresses of the officers, directors and general manager thereof and of the purchasing or selling officer or agent in that transaction and, if the bidder is a firm, partnership or association, the bid shall give the names and addresses of each member thereof, and of the manager, purchasing or selling officer or agent in that transaction.

[32 FR 20013, Dec. 20, 1967, as amended at 40 FR 56669, Dec. 4, 1975]

§ 1010.3 Considerations for acceptance of bids; rejection; readvertising for new bids.

After receiving and opening bids as aforesaid, the carrier receiving the same shall within 48 hours in cases where the sale or purchase of securities is the undertaking, and within 21 days where bids are for supplies, equipment, other articles of commerce and for construction or maintenance work, accept the most favorable bid considering (a) the lowest price or prices for the supplies, equipment, and other articles of commerce, and for the construction or maintenance work, described in the advertisement, and the highest price or prices offered for any securities or property, so described, for sale by the carrier, and (b) the ability and reliability of the bidder, financial and otherwise, to deliver the property or to perform the work or transaction, or to pay for the securities, described in the advertisement, giving due consideration to any bond or security tendered by the bidder.

If the right be reserved in the notice all bids may be rejected and the carrier may readvertise for bids. The carrier shall notify the successful bidder of the acceptance of his or its bid, and the bidder shall within 10 days execute the required contract, and, if required by the notice, execute a good and sufficient bond for the faithful and prompt performance of the contract. In case the successful bidder shall neglect or fail within said time to execute the contract or bond as aforesaid the carrier may within 5 days award the contract to the next most favorable bidder, ascertained as herein provided for determining the most favorable bidder. If neither the most favorable bidder nor the next most favorable bidder shall execute a contract and qualify as aforesaid, the carrier shall readvertise for new bids.

§ 1010.4 Statement of the transaction.

Each carrier after having made and executed a contract as and in the manner above specified shall within 30 days after the execution of such contract file with the Interstate Commerce Commission a statement of the transaction giving, (a) a copy of the published notice; (b) the names of all bidders, and, if the bidder be a corporation, the names and addresses of the officers, directors and general managers thereof and of the purchasing or selling officer or agent in that transaction, or if the bidder be a partnership or firm, the names and addresses of the members of the firm, the general manager and purchasing or selling agent thereof, and the total amount of each bid; (c) the name of the bidder to whom the contract was awarded together with a copy of the contract; and (d) if any other than the lowest or the highest bid, as the case may be, is accepted as being most favorable to the carrier, the reasons for such acceptance. The statement shall be made in typewriting, in pamphlet form on pages not less than 8 by 10½ inches in size nor greater than 9½ by 12 inches, in size, bound on the longer edge of the page, the paper to be of durable quality fit for permanent record.

§ 1010.5 Examination.

In the case of each bid so taken as aforesaid, the carrier shall preserve and keep open for examination by the Interstate Commerce Commission or any duly authorized examiner thereof, (a) a copy of the resolution or order of the Board of Directors, Executive Committee, or officers of the said common carrier specifying the purposes and terms of the contract for which the bids were invited; (b) a copy of the specifications, maps, drawings, and illustrations upon which bids were made; (c) copies of the notices published, sworn to by or on behalf of the publisher of each paper, respectively, giving the dates and times of publication; (d) the original bids received, designating the bid accepted and giving a statement of the reasons for accepting the same; (e) a copy of the contract entered into between the carrier and the accepted bidder, together with a copy of the bonds if any; (f) references by number of volume and page to the records of proceedings of the stockholders, directors, or executive committee of the carrier. The files in each transaction shall be securely fastened together and given the contract number and each document therein shall be numbered consecutively and at the conclusion there shall be a sworn statement by the president, a vice president, or the general manager of the carrier, stating that the files in No. ———— contain true and complete records and statements of all the negotiations had in connection with the contract therein set forth. Carriers subject to the requirements of section 10 of the Clayton Antitrust Act, 15 U.S.C. 20 may destroy such contracts or other records required thereby 10 years after the expiration thereof, without permission of the Commission: *Provided*, There is no litigation pending involving these records: *And further provided*, That the carrier has informed the Commission of its intended action at least 2 weeks prior to the date the records are to be destroyed.

(Secs. 201-227, 49 Stat. 543-567, as amended; sec. 12, 24 Stat. 383, as amended; sec. 20, 24 Stat. 386, as amended; 49 U.S.C. 301-327, 12-20)

§ 1010.7 Carriers subject to the Interstate Commerce Act.

(a) The regulations prescribed in this part are hereby made applicable, on and after January 29, 1938, to all common carriers subject to part II of the Interstate Commerce Act.

(Secs. 201-227, 49 Stat. 543-567, as amended; 49 U.S.C. 301-327)

(b) The regulations prescribed in this part shall apply, on and after the first of May 1942, to all common carriers subject to part III of the Interstate Commerce Act.

(Secs. 12, 20, 24 Stat. 383, as amended, 386, as amended; 49 U.S.C. 12, 20)

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

Sec.

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AUTHORITY: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

SOURCE: 42 FR 65181, Dec. 30, 1977, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes affecting Part 1011 were published at 48 FR 49596, Nov. 1, 1982.

§ 1011.1 General.

(a) This part describes the organization of the Commission, and the assignment of jurisdiction and responsibilities to the Commission, divisions of the Commission, individual Commissioners, and employee boards.

(b) As used in this part "matter" includes any case, proceeding, question, or other matter within the Commission's jurisdiction; "decision" includes any decision, ruling, order, or requirement of the Commission, a division, a single Commissioner, or an employee board; and "Act" means the Interstate Commerce Act, 49 U.S.C. Section 1 et seq.

§ 1011.2 The Commission.

(a) The Commission reserves to itself for consideration and disposition:

(1) All rulemaking and similar proceedings involving the promulgation of rules or the issuance of statements of general policy.

(2) All investigations and other proceedings instituted by the Commission, except as may be ordered in individual situations.

(3) All administrative appeals in a matter previously considered by the Commission.

(4) All other matters submitted for decision except those assigned to a single Commissioner, an employee, or an employee board.

(5) All cases involving general rate increases as defined in 49 CFR Parts 1135 and 1139, as well as similar increases affecting modes of transportation not specifically referred to in those parts; all matters arising under section 1(16)(b) of the act; all cases arising under section 5(2) of the act involving a class I railroad where the matter has involved the taking of testimony at an oral hearing; and all cases arising under section 5(3) of the act.

(6) Except for matters assigned to the Chairman of the Commission under § 1011.5(a)(7), (i) the determination whether to reconsider a decision being challenged in court; (ii) the disposition of matters which have been the subject of an adverse decision by a court; and (iii) the determination whether to file any memorandum or brief on behalf of the Commission as amicus curiae in any court.

(7) The decision of all matters found to involve issues of general transportation importance, and the determination whether issues of general transportation importance are involved in any matter.

(8) All appeals of initial decisions determining:

(i) Whether to designate protested abandonment proceedings for investigation (including action on requests for oral hearing);

(ii) Whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d), for purposes of negotiations or, in exemption proceedings, for purposes of partial revocation and negotiations;

(iii) Whether partially to revoke or to reopen abandonment exemptions authorized, respectively, under 49 U.S.C. 10505 and 49 CFR part 1152 subpart F for the purpose of imposing public use conditions under the criteria in 49 CFR 1152.28 and/or conditions limiting salvage of the rail properties for environmental and historic preservation purposes;

(iv) The applicability and administration of the Trails Act (16 U.S.C. 1247(d)) in abandonment proceedings under 49 U.S.C. 10903–04 (and abandonment exemption proceedings) as set forth in 49 CFR 1011.8(c) (4) and (5); and

(v) Whether to institute requested declaratory order proceedings under 5 U.S.C. 554(e).

Appeals on these matters must be filed within 10 days of the date the action is taken, and responses must be filed within 10 days thereafter.

(b) The Commission may bring before it any matter assigned to a single Commissioner or any employee board. It may establish divisions and assign any matter reserved to it to a division for administrative handling or decision, or both.

[42 FR 65181, Dec. 30, 1977, as amended at 43 FR 30804, July 18, 1978; 47 FR 49596, Nov. 1, 1982; 52 FR 30165, Aug. 13, 1987: 53 FR 3400, Feb. 5, 1988; 54 FR 29337, July 12, 1989]

§ 1011.3 Divisions of the Commission.

The Commission may establish such divisions as it considers necessary to handle any matter before it.

[52 FR 30165, Aug. 13, 1987]

§ 1011.4 The Chairman, Vice Chairman, and Senior Commissioner present.

(a)(1) The Chairman of the Commission is appointed by the President as provided by Reorganization Plan No. 1 of 1969. The Chairman has the authority, duties, and responsibilities assigned to him under that Plan and described in this part.

(2) The Vice Chairman is elected by the Commission for the term of one calendar year.

(3) In the absence of the Chairman, the Vice Chairman is Acting Chairman, and has the authority and responsibilities of the Chairman. In the absence of the Vice Chairman, the Chairman, if present, has the authority and responsibilities of the Vice Chairman. In the absence of both the Chairman and Vice Chairman, the senior Commissioner present, based on time of continuous service as a member of the Commission, is Acting Chairman, and has the authority and responsibilities of the Chairman and the Vice Chairman.

(b)(1) The Chairman is the executive head of the Commission and has general responsibility for (i) the over-all management and functioning of the Commission, (ii) the formulation of plans and policies designed to assure the effectiveness of the Commission in the administration of the Interstate Commerce Act and related Acts, (iii) prompt identification and early resolution, at the appropriate level, of major substantive regulatory problems, and (iv) the development and utilization of effective staff support to carry out the duties and functions of the Commission. All heads of bureaus and offices report to the Chairman.

(2) Subject to the provisions of Reorganization Plan No. 1 of 1969, the Chairman of the Commission exercises the executive and administrative functions of the Commission, including (i) the appointment, supervision, and removal of personnel employed by the Commission, except those in the immediate offices of Commissioners other than the Chairman, subject to Civil Service rules and regulations, (ii) the distribution of business among such personnel and among administrative units of the Commission, and (iii) the use and expenditure of funds.

(3) In carrying out his functions the Chairman is governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission by law is authorized to make.

(4) The appointment by the Chairman of the heads of offices and bureaus is subject to the approval of the Commission.

(c)(1) The Chairman presides at all sessions of the Commission and sees that every vote and official act of the Commission required by law to be recorded is accurately and promptly recorded by the Secretary or the person designated by the Commission for that purpose.

(2) Except regular sessions, which are provided for by regulations prescribed by the Commission, the Chairman may call the Commission into special session whenever in his or her opinion any matter or business of the Commission so requires. The Chairman shall convene a special session for consideration of any matter or business upon request or a member of the Commission unless a majority of the Commission votes not to hold a special session, or to delay conference consideration of that item, or unless the Chairman finds that special circumstances warrant a delay. Notwithstanding the first two sentences of this paragraph, upon the written request of any member of the Commission, the Chairman shall schedule a Commission conference for the purpose of discussing and voting upon significant Commission proceedings involving major transportation issues, and such conference shall be held within a reasonable time following the close of the record in the proceeding involved.

(3) The Chairman exercises general control over the Commission's argument calendar and conference agenda.

(4) The Chairman acts as correspondent and spokesman for the Commission in all matters where an

official expression of the Commission is required.

(5) The Chairman brings to the attention of any Commissioner, division, or board any delay or failure in the work under his, her, or its supervision and initiates ways and means of correcting or preventing avoidable delays in the performance of any work or the disposition of any matter.

(6) The Chairman may appoint such standing or ad hoc committees of the Commission as he considers necessary.

(7) In accordance with Section 1003(a) of the Federal Aviation Act of 1958, 49 U.S.C. 1483, the Chairman, when the occasion arises, in conjunction with corresponding action by the Chairman of the Civil Aeronautics Board, designates a like number of Commissioners to function as members of a joint board to consider and pass on matters referred to it as provided under subsection (c) of that section.

(8) The Chairman may reassign related proceedings to a single division or board of employees and may remove a matter from a division, a single Commissioner, or an employee board for consideration and disposition by the Commission.

(9) The Chairman may authorize any officer, employee, or administrative unit of the Commission to perform a function vested in or delegated to the Chairman.

(10) The Chairman authorizes the institution of investigations on the Commission's own motion, and their discontinuance at any time prior to hearing, except for investigations under sections 15(7), 216(g), 218(c), 307 (g) and (i), or 406(e) of the Act.

(11) The Chairman approves for publication all publicly-issued documents by a bureau or office, except (i) publications authorized or adopted by the Commission, a division, or a single Commissioner that involve decisions in formal proceedings; (ii) decisions or informal opinions of a bureau or office, or an initial decision of a hearing officer; and (iii) documents prepared for court cases or for introduction into evidence in a formal proceeding.

[42 FR 65181, Dec. 30, 1977, as amended at 50 FR 2985, Jan. 23, 1985]

§ 1011.5 Delegations to individual Commissioners.

(a) The following matters are referred to the Chairman of the Commission:

(1) Entry of reparation orders responsive to findings authorizing the filing of statements of claimed damages as provided in § 1100.95.

(2) Extensions of time for compliance with orders and procedural matters in any formal case or pending matter, except appeals taken from the decision of a hearing officer on requests for discovery.

(3) Postponement of the effective date of orders in proceedings that are the subject of suits brought in a court to enjoin, suspend, or set aside the decision.

(4) Dismissal of complaints and applications on the unopposed motion of any party.

(5) Requests for access to waybills and to statistics reported under orders of the Commission.

(6) Matters relating to closing of transactions in accordance with conditions prescribed by the Commission under part V of the Act, including the execution on behalf of the Commission of contracts and other instruments incident to the closing of such transactions; and matters relating to the administration of loans and other financing guaranteed under part V of the Act, including the giving of consents by the Commission under guaranty agreements and the construction of provisions contained in those agreements and other agreements entered into in connection with those loans or other financing.

(7) Exercise of control over litigation arising under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a), except for determinations whether to seek further judicial review of (i) a decision in which a court finds under 5 U.S.C. 552(a)(4)(F) that Commission personnel may have acted arbitrarily or capriciously in improperly withholding records from disclosure, or (ii) a decision in which a court finds under 5 U.S.C. 552a(g)(4) that Commission personnel acted intentionally or will-

fully in violating the provisions of the Privacy Act.

(8) Issuance of certificates and decisions when no protest is received within 30 days after an abandonment or discontinuance application is filed under 49 U.S.C. 10903 and the Commission must find, pursuant to 49 U.S.C. 10904(b), that the public convenience and necessity require or permit the abandonment or discontinuance.

(9) Issuance of certificates and decisions authorizing the Consolidated Rail Corporation to abandon or discontinue service over lines for which an application under section 308 of the Regional Rail Reorganization Act of 1973 has been filed.

(b) The following matters are referred to the Vice Chairman of the Commission:

(1) Matters within the jurisdiction of the Accounting Board and the Valuation Board if certified to the Vice Chairman by the Board or if removed from the Board by the Vice Chairman.

(2) Matters involving the admission, disbarment or discipline of practitioners before the Commission under rules 7 through 11 of the General Rules of Practice (§§ 1100.7 to 1100.11).

(3) Reduced rates authorization in cases of calamitous visitation under 49 U.S.C. 10721 and, in related matters, relief from the provisions of 49 U.S.C. 10730 and the long and short haul restrictions of 49 U.S.C. 10726.

(c) The Chairman, Vice Chairman, or any other Commissioner may certify to the Commission any matter assigned to him or her under this part.

(d) The Chairman shall give notice to all Commissioners that a petition for a stay has been referred to him or her for disposition pursuant to the delegation of authority in paragraphs (a)(2) and (a)(3) of this section. The Chairman shall also advise all Commissioners of his or her decision on the petition. At the request of a Commissioner, made at any time before the Chairman's decision is served, the petition will be referred to the Commission for decision.

[42 FR 65181, Dec. 30, 1977, as amended at 43 FR 30804, July 18, 1978; 44 FR 12426, Mar. 7, 1979; 45 FR 5739, Jan. 24, 1980; 45 FR 28143, Apr. 28, 1980; 45 FR 45526, July 3, 1980; 45 FR 64959, Oct. 1, 1980; 47 FR 47842 Oct. 28, 1982; 47 FR 49596, Nov. 1, 1982; 49 FR 36385, Sept. 17, 1984]

§ 1011.6 Employee Boards.

This section sets forth matters assigned to boards of employees of the commission. Except as provided in paragraph (g) of this section, a board may certify any matter assigned to it to the Commission.

(a) *Suspension and Fourth Section Board.* (1) Matters arising under sections 15(7), 15(8), 216(g), 218(c), 307 (g) and (i), and 406(e) of the Act: The Board is authorized (i) initially to dispose of these matters, by declining to suspend a rate or a classification, rule, or practice related to a rate, or by suspending such rate, classification, rule, or practice and ordering an investigation; (ii) to institute investigations into rates, fares, charges, and practices of regulated carriers; and (iii) prior to the submission of evidence, to discontinue any proceeding when the proposed rate, classification, rule, or practice has been cancelled. This delegation of authority does not include authority over petitions or requests, relating to rates, classifications, rules or practices filed in purported compliance with decisions of the Commission or a division, or actions in connection with suspensions to be taken during or after formal hearings or investigations.

(2) Matters arising under section 4 of the Act, except proceedings made subject of formal hearing, matters prompted by an order of requirement of the Commission or a division, or matters arising from general increase proceedings.

(b) *Operations Boards.* (1) Insurance Board:

(i) Matters arising under section 211(c) of the Act, relating to bonds or other security to assure financial responsibility of brokers; section 215, with respect to the furnishing by motor carriers of bonds, insurance, or other security, for the protection of the public; except matters involving taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(ii) Matters arising under section 221(a) and (c) of the Act relating to the designation by motor carriers and brokers of persons on whom orders and notices may be served and the designation of agents upon whom service of process may be made, except matters imvolving taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(iii) Matters arising under section 11711 of the Act insofar as they relate to reviewing and approving claim dispute settlement programs submitted by motor common carriers of household goods, and to revoking or suspending approval of such programs should a carrier (or carriers) fail to meet the statutory requirements of section 11711; provided, however, that the Insurance Board shall certify a representative sampling of proposed dispute settlement programs to the Commission.

(2) Motor Carrier Leasing Board. Matters arising under sections 204(e) and (f) and 204(a)(6) of the Act, insofar as they relate to the lease and interchange of vehicles by motor carriers, and the lease and interchange regulations (49 CFR part 1057), except matters involving taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(3) Railroad Service Board. Matters relating to car-service except controversies between carriers as to compensation, under provisions of sections 1 (15) and (16)(a) which have not involved taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(4) Entry of show cause orders under sections 11701 and 10925 (b)(1), (c)(1), and (c)(3) directed to motor carriers, brokers, water carriers, and household goods freight forwarders who have failed to submit the proper application fee or to file required annual reports; determination of uncontested motor carrier, broker, water carrier, and household goods freight forwarder, suspension, change or revocation proceeding under section 49 U.S.C. 10925 of the Act, which have not involved taking testimony at a public hearing.

(5) Any matter referred to an Operations Board that is subsequently assigned for taking testimony at a public hearing shall be withdrawn from the Board.

(6) The Railroad Service Board will establish and oversee modified hearing procedures associated with the implementation of section 226 of the Staggers Rail Act of 1980, Pub. L. 96-448. Section 226 revises section 11123(a) of Title 49, United States Code, and provides for issuance of extensions of emergency service orders by the full Commission under that section. Each order issued pursuant to the revised section will contain a notice of the hearing procedures to be followed with respect to any extension of that order.

(c) *Special Permission Board.* Special permission or other permissible waivers of rules regarding tariffs or schedules, under sections 6(3), 217(c), 218(a), 306(d), 306(e), and 405(d) of the Act, including authorization for the cancellation of suspended tariffs or schedules, that have not involved taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(d) *Released Rates Board.* Matters arising under sections 20(11), 219, and 413 of the Act insofar as they relate to applications for authorization to establish released rates and ratings that have not involved taking testimony at a public hearing or the submission of evidence affidavits.

(e) *Accounting and Valuation Board.* (1) Authority: (i) To permit departure from general rules, prescribing uniform systems of accounts for carriers and other persons under the act, and from the regulations to govern the forms and recording of passes for carriers and other persons under parts I and II of the act;

(ii) To prescribe rates of depreciation to be used by railroad and water carriers;

(iii) To issue special authorizations permitted by the regulations governing the destruction of records of carriers subject to the act;

(iv) To grant extensions of time for filing annual, periodical, and special reports in matters which do not involve taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits; and

(v) To issue valuation reports in matters which do not involve taking testimony at public hearings or the submission of evidence by opposing parties in the form of affidavits.

(2) The Board may certify any matter assigned to it to the Vice Chairman of the Commission.

(f) *Tariff Rules Board.* Matters arising under sections 6(6), 217(a), 306(b), and 405(b) of the Act, related to the prescription of regulations concerning the form and manner in which tariffs required to be filed shall be published, filed, and posted, including the institution of rulemaking proceedings for the purpose of prescribing new or changed regulations, except matters involving taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(g) *Special Docket Board.* Determination of Special Docket Proceedings under Rules 23(e) and (f) of the General Rules of Practice and reduced rate matters arising in the cases of calamitous vistation under 49 U.S.C. 10721 and in related matters, to authorize relief from the provisions of 49 U.S.C. 10726, 10730, 11707.

(h) *Regional Motor Carrier Boards.* Matters arising under 49 U.S.C. 10928, relating to applications for temporary authority by common or contract carriers by motor vehicle or water, except matters involving broad questions of policy, matters in which the decision of the Boards would be inconsistent with a decision of the Commission or a division, and matters in which substantially the same question is already before the Commission or a division.

(i) *Motor Carrier Board.* The following matters will be assigned to an employee board:

(1) Pre-publication matters in operating rights applications of motor carriers (except those requesting authority to transport non-hazardous property filed by applicants with "conditional" DOT safety fitness ratings), water carriers, household goods freight forwarders, and property brokers.

(2) Motor passenger carrier (except applications by carrier with less than satisfactory safety ratings from DOT), water carrier finance applications under 49 U.S.C. 11343-11344, and small carrier transfer applications under 49 U.S.C. 10926.

(3) Temporary authority applications related to finance proceedings under 49 U.S.C. 11349,

(4) Applications for certificates of registration by foreign motor carriers and foreign motor private carriers under 49 U.S.C. 10530, and

(5) Determination of applications, which have not involved taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits, under:

(i) 49 U.S.C. 10321, relating to the transfer of brokers' licenses; and

(ii) 49 U.S.C. 10931 and 10932, relating to the transfer of Certificates of Registration and rights to operate pending determination of applications for Certificates of Registration.

[42 FR 65181, Dec. 30, 1977]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1011.6, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 1011.7 Delegations of authority by the Chairman of the Interstate Commerce Commission.

(a)(1) This section provides for delegations of authority by the Chairman of the Interstate Commerce Commission to individual employees of the Commission.

(2) The Chairman of the Commission may remove for disposition any matter delegated under this section, and an employee of the Commission may refer any matter delegated to him or her under this section to the Chairman of the Commission for disposition.

(b)(1) Appeals from the decision of employees acting under authority delegated pursuant to this section will be acted upon by the Chairman of the Commission. Appeals must be filed within 10 days of the date of the action taken by the employee, and responses to appeals must be filed within 10 days thereafter. Such appeals are not favored; they will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.

(2) The Chairman may, on his or her own motion, review, reverse, or modify any decision of an employee acting under authority delegated under this section.

(c)(1) As used in this paragraph, the term "procedural matter" includes, but is not limited to, the assignment of the time and place of hearing; the assignment of proceedings to Administrative Law Judges; the issuance of orders directing special hearing procedures; the establishment of dates for filing statements in cases assigned for handling under modified (non-oral hearing) procedure; the consolidation of proceedings for hearing or disposition; the postponement of hearings and of procedural dates; the waiver of formal specifications for pleadings; and extensions of time for filing pleadings. It does not include interlocutory appeals from the rulings of hearing officers; nor does it include the postponement of the effective date of:

(i) Decisions pending judicial review,

(ii) Decisions of the entire Commission,

(iii) Cease and desist orders,

(iv) Orders suspending or revoking operating authority, or

(v) Final decisions where petitions for discretionary review have been filed under § 1115.5.

(2) Unless otherwise ordered by the Commission in individual proceedings, authority to dispose of procedural matters arising prior to the issuance of an initial decision in proceedings assigned for handling under oral hearing procedure or assigned to an administrative law judge under modified procedure is delegated to the Chief Administrative Law Judge of the Commission. Notwithstanding this delegation, Commissioners, Administrative Law Judges, and Joint Boards appointed under 49 U.S.C. 305 retain the authority to dispose of procedural matters in proceedings assigned to them.

(3) Unless otherwise ordered by the Commission in individual proceedings, authority to dispose of procedural matters in proceedings assigned for handling under modified procedure, other than those assigned to an administrative law judge, or arising in a proceeding after the issuance of an initial decision of a hearing officer in proceedings which have been the subject of an oral hearing is delegated to the Director of the Office of Proceedings of the Commission.The Director of the Office of Proceedings shall also have authority, unless otherwise ordered by the Chairman in individual proceedings, to decide whether operating rights application and complaint proceedings shall be handled under the modified procedure or assigned to the Office of Hearings.

(d) Except as provided in § 1113.3(b)(1), authority to dismiss complaints at the request of the complainant, or applications at the request of applicants, is delegated to the Director of the Office of Proceedings and the Chief Administrative Law Judge of the Commission.

(e) The entry of reparation orders, responsive to findings authorizing the filing of statements of claimed damages as provided in § 1133.2, is delegated to the Director of the Bureau of Traffic of the Commission.

(f) Authority to grant or deny access to waybills and to statistics reported under orders of the Commission is delegated to the Director of the Bureau of Economics of the Commission.

(g) Certain accounts in the Uniform Systems of Accounts, 49 CFR 1201/1211, require Commission approval to use. Authority to grant or deny requests for use of these accounts is delegated to the Director of the Bureau of Accounts, the Assistant Director, and the Chief, Section of Accounting.

(h) Authority, under the Regulatory Flexibility Act (Pub. L. 96-354), (1) to sign and transmit to the Small Business Administration certifications of no significant economic effect for proposed rules, which will not, if adopted by the Commission, have a significant economic impact on a substantial number of small entities; and

(2) to sign and transmit findings regarding waiver or delay of an initial regulatory flexibility analysis or delay of a final regulatory flexibility analysis is delegated to the Secretary of the Commission.

(i) Issuance of certificates and decisions when no protest is received within 30 days after an abandonment or discontinuance application is filed under 49 U.S.C. 10903, and the Commission must find, pursuant to 49 U.S.C. 10904(b) that the public convenience and necessity require or permit the abandonment or discontinuance, is delegated to the Director of the Office of Proceedings.

(j) Issuance of certificates and decisions authorizing the Consolidated Rail Corporation to abandon or discontinue service over lines for which an application under section 308 of the Regional Rail Reorganization Act of 1973 has been filed is delegated to the Director of the Office of Proceedings.

[43 FR 1091, Jan. 6, 1978, as amended at 43 FR 7438, Feb. 23, 1978; 43 FR 58189, Dec. 12, 1978; 45 FR 86789, Dec. 31, 1980; 46 FR 32449, June 23, 1981; 47 FR 49597, Nov. 1, 1982; 47 FR 54083, Dec. 1, 1982; 47 FR 55686, Dec. 13, 1982; 49 FR 36385, Sept. 17, 1984; 50 FR 30275, July 25, 1985]

§ 1011.8 Delegations of authority by the Interstate Commerce Commission to specific bureaus and offices of the Commission.

(a) *Office of Public Assistance.* (1) There is established an Office of Public Assistance. The Office assumes the functions previously assigned to the former Office of Special Counsel, the former Small Business Assistance Office, and the State/Community Affairs Liaison position formerly in the Office of Legislation and Governmental Affairs.

(2) The Office shall be managed by a Director, who will also serve as Special Counsel of the Commission, and by a Deputy Director, who will also serve as the Small Business Assistance Officer of the Commission. The Special Counsel shall be appointed by the Chairman, subject to the approval of a majority of the Commission.

(3) The mission of the Office will be to assist the Commission and the public in determining and representing the public interest, with regard to the Interstate Commerce Act and related statutes. The primary function of the Office is to act as the focal point to coordinate Commission activities insuring:

(i) That the public interest is fully developed in proceedings before the Commission and especially to contribute to the development of a complete record in proceedings in which important aspects of the public interest otherwise would not be adequately explored, in particular, proceedings affecting the interests of bus passengers, household goods shippers, owner operators, and Class II and III rail carriers and the shippers they serve;

(ii) That small and minority owned transportation entities, transportation related entities, consumer groups, small communities, carriers and shippers, and State regulatory officials are advised on the applicability and interpretation of the law, and the availability of assistance from the Commission as this applies to their enterprise; and

(iii) That the Commission is advised on policy matters related to its small business assistance functions and programs.

(4) The Office will participate as a party in Commission proceedings, including rulemaking proceedings, only upon submission of a petition to do so and approval of the petition by a majority of the Commission.

(5) So that parties having need of the assistance of the Office will be adequately informed, the Office of Hearings is directed in noticing cases for public hearings, to advise parties of the availability of this program.

(b) *Office of the Secretary.* Authority to waive filing fees set forth in § 1002.2(f) will be delegated to the Secretary of the Commission, to be exercised in consultation with involved offices.

(c) *Office of Proceedings.* The Director shall have authority initially determinative of the following:

(1) Whether to designate protested abandonment proceedings for investigation (including action on requests for oral hearing).

(2) Whether offers of financial assistance satisfy the statutory standards of 49 U.S.C. 10905(d), for purposes of negotiations or in exemption proceedings for purposes of partial revocation and negotiations.

(3) Whether partially to revoke or to reopen abandonment exemptions authorized under 49 U.S.C. 10505, and 49 CFR part 1152, subpart F for the purpose of imposing public use conditions

under the criteria in 49 CFR 1152.28 and/or conditions limiting salvage of the rail properties for environmental and historic preservation purposes.

(4) In all abandonment proceedings under 49 U.S.C. 10903-04 (and abandonment exemption proceedings), when an interim trail use statement is filed under 49 CFR 1152.29, determining whether the Trails Act is applicable and issuing Certificates of Interim Trail Use or Abandonment, and in exempt abandonment proceedings, issuing Notices of Interim Trial Use of Abandonment.

(5) In any abandonment proceeding where interim trail use under 49 CFR 1152.29 is an issue, to make such findings and issue decisions as may be necessary for the orderly administration of the trail use statute, 16 U.S.C. 1247(d).

(6) Whether to institute requested declaratory order proceedings under 5 U.S.C. 554(e).

(7) In all exemption proceedings under 49 U.S.C. 11343(e) involving non-rail intermodal parties, to make such findings as necessary and to issue notices of exemption.

(8) To issue decisions, after 60 days' notice by any person discontinuing a subsidy established under 49 U.S.C. 10905 and at the railroad's request:

(i) In application proceedings, immediately issuing certificates of abandonment or discontinuance; and

(ii) In exemption proceedings, immediately vacating the decision that postponed the effective date of either the notice of exemption or the decision granting the exemption.

[49 FR 18494, May 1, 1984 and 51 FR 15630, Apr. 25, 1986, as amended at 51 FR 35223, Oct. 2, 1986; 52 FR 46774, Dec. 10, 1987; 52 FR 48440, Dec. 22, 1987; 53 FR 3401, Feb. 5, 1988; 54 FR 29337, July 12, 1989; 54 FR 39741, Sept. 28, 1989; 54 FR 50386, Dec. 6, 1989]

PART 1012—MEETINGS OF THE COMMISSION

Sec.

1012.1 General provisions.
1012.2 Time and place of meetings.
1012.3 Public notice.
1012.4 Public participation.
1012.5 Transcripts; minutes.
1012.6 Petitions seeking to open or close a meeting.
1012.7 Meetings which may be closed to the public.

AUTHORITY: 5 U.S.C. 552b(g), as amended by Pub. L. 94-409, 90 Stat. 1241; 49 U.S.C. 17(3), 24 Stat. 385, as amended.

SOURCE: 42 FR 13796, Mar. 11, 1977, unless otherwise noted.

§ 1012.1 General provisions.

(a) The regulations contained in this part are issued pursuant to the provisions of 5 U.S.C. 552b(g), added by section 3(a) of the Government in the Sunshine Act, Pub. L. 94-409 (Act), and section 17(3) of the Interstate Commerce Act. They establish procedures under which meetings of the Interstate Commerce Commission (Commission), Divisions of the Commission (Division), and standing committees of the Commission are held. They apply to oral arguments as well as to deliberative conferences. They apply to meetings of the Commission and of Divisions and committees of the Commission where the Division or committee is empowered to act on the Commission's behalf, but not where a Division or committee is meeting only to formulate an internal recommendation to the Commission. They include provisions for giving advance public notice of meetings, for holding meetings which may lawfully be closed to the public, and for issuing minutes and transcripts of meetings.

(b) The words "meeting" and "conference" are used interchangeably in this part to mean the deliberations of at least a majority of the members of the Commission, a Division, or a committee of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business. They do not include meetings held to determine whether some future meeting should be open or closed to the public. They do not include the deliberations of members of boards of employees of the Commission.

(c) These regulations are not intended to govern situations in which members of the Commission consider individually and vote by notation upon matters which are circulated to them in writing. Copies of the votes or statements of position of all Commissioners eligible to participate in action taken by notation voting will be made available, as soon as possible after the date upon which the action taken is made public or any decision or order adopted is served, in a public reading room or other easily accessible place within the Commission, or upon written request to the Secretary of the Commission.

§ 1012.2 Time and place of meetings.

(a) Conferences, oral arguments, and other meetings are held at the Commission's headquarters building at the northwest corner of 12th Street and Constitution Avenue in Washington, DC, unless advance notice of an alternative site is given. Room assignments for meetings will be posted on the day of the meeting at the Constitution Avenue entrance to the Interstate Commerce Commission building and at the Commission's Public Information Office (Room 1211).

(b) Regular Commission conferences are held on the first and third Tuesdays of each month, or on the following day if the regular conference day is a holiday. Oral arguments before the Commission are normally scheduled on the first or third Wednesday of each month. Regular Commission conferences and oral arguments before the Commission or a Division normally begin at 9:30 a.m A luncheon recess is taken at approximately noon, and other recesses may be called by the presiding officer. Times for reconvening following a recess, or on subsequent days if a conference or oral argument lasts more than one day, are set by the presiding officer at the time the recess is announced.

(c) Special Commission conferences, Division conferences, oral arguments before a Division, and meetings of committees of the Commission are scheduled by the Chairman of the Commission or of the respective Division or committee.

(d) If one or more portions of the same meeting are open to the public while another portion or other portions are closed, all those portions of the meeting which are open to the public are scheduled at the beginning of the meeting agenda, and are followed by those portions which are closed.

§ 1012.3 Public notice.

(a) Unless a majority of the Commission determines that such information is exempt from disclosure under the Act, public notice of the scheduling of a meeting will be given by posting a notice on the bulletin board in the Commission's Public Information Office, by filing a copy of the notice with the Secretary of the Commission for posting and for service on all parties of record in any proceeding which is the subject of the meeting or any other person who has requested notice with respect to meetings of the Commission, and by submitting a copy of the notice for publication in the FEDERAL REGISTER.

(b) Public notice of a scheduled meeting will contain:

(1) The date, time, place, and subject matter of the meeting.

(2) Whether it is open to the public.

(3) If the meeting or any portion of the meeting is not open to the public, an explanation of the action taken in closing the meeting or portion of the meeting, together with a list of those expected to attend the meeting and their affiliations.

(4) If a vote is taken on the question whether to close a meeting or a portion of a meeting to the public, a statement of the vote or position of each Commissioner eligible to participate in that vote. If such a vote is taken, public notice of its result will be posted within one working day following completion of the voting. If the result of the vote is to close the meeting or a portion of the meeting, an explanation of that action will be included in the notice to be issued within one working day following completion of the voting. The public notice otherwise required by this subparagraph may be withheld if the Commission finds that such information is exempt from disclosure under the Act.

(5) The name and telephone number of the Commission official designated to respond to requests for information about the meeting. Unless otherwise

specified, that official will be the Commission's Public Information Officer, whose telephone number is (202) 275-7252.

(c) Except as provided in paragraphs (d) and (e) of this section, public notice will be given at least one week before the date upon which a meeting is scheduled.

(d) Due and timely execution of the Commission's functions will not normally permit the giving on one week's public notice of meetings called to consider or determine whether to suspend or investigate a tariff or schedule under sections 15(7), 15(8), 215(g), 218(c), 307(g), 307(i), or 406(e) of the Interstate Commerce Act (49 U.S.C. 15(7), 15(8), 316(g), 318(c), 907(g), 907(i), 1006(e)); to consider whether to grant special permission to deviate from tariff filing requirements under section 6(3), 217(c), 218(a), 306(d), 306(e), or 405(d) of the Interstate Commerce Act (49 U.S.C. 6(3), 317(c), 318(a), 906(d), 906(e), or 1005(d)); or to consider or dispose of an application for temporary authority under section 210a(a) or 311(a) of the Interstate Commerce Act (49 U.S.C. 310a(a) or 911(a)). Such meetings will normally be called on less than one week's notice, and public notice will be posted and published at the earliest practicable time.

(e) If a majority of the Commissioners eligible to participate in the conduct or disposition of the matter which is the subject of a meeting determines, by recorded vote, that Commission business requires that a meeting be called on less than one week's notice, the meeting may be called on short notice, and public notice will be posted and published at the earliest practicable time.

(f) Changes in the scheduling of a meeting which has been the subject of a public notice will also be made the subject of a public notice, which will be posted at the earliest practicable time. Changes in, or additions to a conference agenda or in the open or closed status of a meeting will be made only if a majority of the Commissioners eligible to participate in the conduct or disposition of the matter which is the subject of the meeting determines, by recorded vote, that the Commission's business requires such change and that no earlier announcement of the change was possible. In such a case, the public notice of the change, will show the vote of each Commissioner on the change.

§ 1012.4 Public participation.

(a) In the case of Commission or Division conferences or meetings of committees of the public, members of the public will be admitted as observers only. Active participation, as by asking questions or attempting to participate in the discussion, will not be permitted, and anyone violating this proscription may be required to leave the meeting by the presiding officer.

(b) Oral arguments are always open to the public. The scheduling of participants in the arguments and the allotment of time is governed by the 49 CFR Part 1115.

[42 FR 13796, Mar. 11, 1977, as amended at 47 FR 49596 and 49597, Nov. 1, 1982; 47 FR 54083, Dec. 1, 1982; 47 FR 55686, Dec. 13, 1982]

§ 1012.5 Transcripts; minutes.

(a) A verbatim transcript, sound recording or minutes will be made of all meetings closed to the public under these regulation, and will be retained by the Commission for two years following the date upon which the meeting ended, or until one year after the conclusion of any proceeding with respect to which the meeting was held, whichever occurs later. In the case of meetings closed to the public under § 1012.7(d) (1) through (7) and (9) of this part, a transcript or recording rather than minutes will be made and retained.

(b) The Commission will make available free of charge, upon request, in a public reading room or some other easily accessible place, the minutes, transcript or recording of all portions of any meeting which was closed to the public except those portions which it finds to be properly exempt from disclosure under the Act. A copy of such minutes, transcript or recording will be provided, upon request, upon payment of fees as provided in part 1002 of this chapter.

(c) In the case of all meetings closed to the public, the presiding officer shall cause to be made, and the Commission shall retain, a statement setting forth:

(1) The date, time, and place of the meeting.

(2) The names and affiliations of those attending.

(3) The subject matter.

(4) The action taken.

(5) A copy of the certification issued by the General Counsel that, in his or her opinion, the meeting was one that might properly be closed to the public.

§ 1012.6 Petitions seeking to open or close a meeting.

(a) The Commission will entertain petitions requesting either the opening of a meeting proposed to be closed to the public or the closing of a meeting proposed to be open to the public. In the case of a meeting of the Commission, the original and 15 copies of such a petition shall be filed, and in the case of a meeting of a Division or committee of the Commission, an original and five copies shall be filed.

(b) A petition to open a meeting proposed to be closed, filed by any interested person, will be entertained.

(c) A petition to close a meeting proposed to be open will be entertained only in cases in which the subject at the meeting would:

(1) Involve accusing a person of a crime or formally censuring a person.

(2) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

(3) Disclose trade secrets or commercial or financial information obtained on a privileged or confidential basis.

(4) Disclose investigatory records or information, compiled for law enforcement purposes, to the extent that the production of such records or information would (i) interfere with enforcement proceedings being conducted or under consideration by an agency other than the Commission; (ii) deprive a person of a right to a fair trial or an impartial adjudication; (iii) constitute an unwarranted invasion of personal privacy; (iv) disclose the identity of a confidential investigation agency or a national security intelligence agency; (v) disclose investigative techniques and procedures of an agency other than the Commission; or (vi) endanger the life or physical safety of law enforcement personnel.

(5) Disclose information the premature disclosure of which could lead to significant financial speculation in securities.

(d) Every effort will be made to dispose of petitions to open or close a meeting in advance of the meeting date. However, if such a petition is received less than three working days prior to the date of the meeting, it may be disposed of as the first order of business at the meeting, in which case the decision will be communicated to the petitioner orally through the Commission's Public Information Officer or other spokesperson.

§ 1012.7 Meetings which may be closed to the public.

(a) A meeting may be closed pursuant to this section only if a majority of the Commissioners eligible to participate in the conduct or disposition of the matter which is the subject of the meeting votes to close the meeting.

(b) A single vote may be taken to close a series of meetings on the same particular matters held within 30 days of the initial meeting in the series.

(c) With respect to any meeting closed to the public under this section, the General Counsel of the Commission will issue his or her certification that, in his opinion, the meeting is one which may properly be closed pursuant to one or more of the provisions of paragraph (d) of this section.

(d) Meetings or portions of meetings may be closed to the public if the meeting or portion thereof is likely to:

(1) Disclose matters (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order.

(2) Relate solely to the internal personnel rules and practices of the Commission.

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552); *Provided,*

That such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Disclose trade secrets or commercial information obtained from a person and privileged or confidential.

(5) Involve accusing any person of a crime, or formally censuring any person.

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and (in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation) disclose confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel.

(8) Disclose information the premature disclosure of which could (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution.

(9) Disclose information, the premature disclosure of which would be likely significantly to frustrate implementation of a proposed Commission action, except that this subparagraph shall not apply in any instance after the content or nature of the proposed Commission action has already been disclosed to the public by the Commission, or where the Commission is required bv law to make such disclosure prior to the taking of final Commission action on such proposal.

(10) Specifically concern the issuance of a subpoena.

(11) Specifically concern the Commission's participation in a civil action or proceeding or an arbitration.

(12) Specifically concern the initiation, conduct, or disposition of a particular case or formal adjudication conducted pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after an opportunity for hearing.

PART 1013—GUIDELINES FOR THE PROPER USE OF VOTING TRUSTS

Sec.

1013.1 The independence of the trustee of a voting trust.
1013.2 The irrevocability of the trust.
1013.3 Review and reporting requirements for regulated carriers.

AUTHORITY: 49 U.S.C. 10321 and 5 U.S.C. 553.

SOURCE: 44 FR 59909, Oct. 17, 1979, unless otherwise noted.

§ 1013.1 The independence of the trustee of a voting trust.

(a) In order to avoid an unlawful control violation, the independent voting trust should be established before a controlling block of voting securities is purchased.

(b) In voting the trusteed stock, the trustee should maintain complete independence from the creator of the trust (the settlor).

(c) Neither the trustee, the settlor, nor their respective affiliates should have any officers or board members in common or direct business arrangements, other than the voting trust, that could be construed as creating an indicium of control by the settlor over the trustee.

(d) The trustee should not use the voting power of the trust in any way which would create any dependence or intercorporate relationship between the settlor and the carrier whose corporate securities constitute the corpus of the trust.

(e) The trustee should be entitled to receive cash dividends declared and paid upon the trusteed voting stock and turn them over to the settlor. Dividends other than cash should be received and held by the trustee upon the same terms and conditions as the stock which constitutes the corpus of the trust.

(f) If the trustee becomes disqualified because of a violation of the trust agreement or if the trustee resigns, the settlor should appoint a successor trustee within 15 days.

§ 1013.2 The irrevocability of the trust.

(a) The trust and the nomination of the trustee during the term of the trust should be irrevocable.

(b) The trust should remain in effect until certain events, specified in the trust, occur. For example, the trust might remain in effect until (1) all the deposited stock is sold to a person not affiliated with the settlor or (2) the trustee receives a Commission decision authorizing the settlor to acquire control of the carrier or authorizing the release of the securities for any reason.

(c) The settlor should not be able to control the events terminating the trust except by filing with this Commission an application to control the carrier whose stock is held in trust.

(d) The trust agreement should contain provisions to ensure that no violations of 49 U.S.C. 11343 will result from termination of the trust.

§ 1013.3 Review and reporting requirements for regulated carriers.

(a) Any carrier choosing to utilize a voting trust may voluntarily submit a copy of the voting trust to the Commission for review. The Commission's staff will give an informal, nonbinding opinion as to whether the voting trust effectively insulates the settlor from any violation of Commission policy against unauthorized acquisition of control of a regulated carrier.

(b) Any person who establishes an independent trust for the receipt of the voting stock of carrier must file a copy of the trust, along with any auxiliary or modifying documents, with the Commission.

(c) Any carrier required to file a Schedule 13D with the Securities and Exchange Commission (17 CFR 240.13d-1) which reports the purchase of 5 percent or more of the registered securities of another I.C.C. regulated carrier (or the listed shares of a company controlling 10 percent or more of the stock of an I.C.C. regulated carrier), must simultaneously file a copy of that schedule with this Commission, along with any supplements to that schedule.

(d) Failure to comply with the reporting requirements in paragraphs (b) or (c) of this section will result in denial of the application in which acquisition of control, through the acquisition of the voting stock of another carrier, is sought, unless the applicant shows, by clear and convincing evidence, and the Commission finds, that the failure to comply was unintentional and that denial of the application will substantially and adversely effect the public interest and the national transportation policy.

PART 1014—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE INTERSTATE COMMERCE COMMISSION

Sec.
1014.101 Purpose.
1014.102 Application.
1014.103 Definitions.
1014.104—1014.109 [Reserved]
1014.110 Self-evaluation.
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1014.112—1014.129 [Reserved]
1014.130 General prohibitions against discrimination.
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1014.149 Program accessibility: Discrimination prohibited.
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1014.160 Communications.
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1014.170 Compliance procedures.
1014.171—1014.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22896, June 23, 1986, unless otherwise noted.

§ 1014.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1014.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 1014.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alocoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Qualified handicapped person means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can acheive the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) "Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 1014.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 1014.104—1014.109 [Reserved]

§ 1014.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 1014.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 1014.112—1014.129 [Reserved]

§ 1014.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 1014.131—1014.139 [Reserved]

§ 1014.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1014.141—1014.148 [Reserved]

§ 1014.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1014.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1014.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1014.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 1014.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 1014.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 1014.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 1014.152—1014.159 [Reserved]

§ 1014.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and adminstrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1014.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 1014.161—1014.169 [Reserved]

§ 1014.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Equal Opportunity Officer shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Office of Human Relations, Interstate Commerce Commission, Room 3147, Washington, DC 20423.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 1014.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22896, June 23, 1986, as amended at 51 FR 22896, June 23, 1986]

§§ 1014.171--1014.999 [Reserved]

PART 1016—SPECIAL PROCEDURES GOVERNING THE RECOVERY OF EXPENSES BY PARTIES TO COMMISSION ADJUDICATORY PROCEEDINGS

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AUTHORITY: 49 U.S.C. 10321, 5 U.S.C. 504(c)(1), and 5 U.S.C. 553.

SOURCE: 46 FR 61660, Dec. 18, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 1016.101 Purpose of these rules.

The Equal Access to Justice Act (5 U.S.C. 504) (called the "Act" in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Interstate Commerce Commission. An eligible party may receive an award when it prevails over the Commission or another agency of the United States participating in the Commission proceeding, unless the Commission's position in the proceeding, or that of the other agency, was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

§ 1016.102 When the Act applies.

The Act applies to any adversary adjudication pending before the Commission after October 1, 1981. This includes proceedings begun before October 1, 1981, if final Commission action has not been taken before that date, regardless of when they were initiated or when final Commission action occurs. These rules incorporate the changes made in Pub. L. No. 99-80, 99 Stat. 183, which applies generally to cases instituted after October 1, 1984. If awards are sought for cases pending on October 1, 1981 or filed between that date and September 30, 1984, the prior statutory provisions (to the extent they differ from the existing ones, and our implementing rules) apply.

[54 FR 26379, June 23, 1989]

§ 1016.103 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Commission under 5 U.S.C. 554 in which the position of this or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative (hereinafter "agency counsel") who enters an appearance and participates in the proceeding. Proceedings for the purpose of establishing or fixing a rate are not covered by the Act. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications." Generally, the types of Commission proceedings covered by the Act include, but are not limited to, investigation proceedings instituted under 49 U.S.C. 11701 and 49 U.S.C. 10925 and disciplinary proceedings conducted pursuant to 49 CFR 1100.11.

(b) The Commission may also designate a proceeding not listed in paragraph (a) of this section as an adversary adjudication for purposes of the Act by so stating in an order initiating the proceeding, designating the matter for hearing or at any other time during the proceeding. The Commission's failure to designate a proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 1016.104 Decisionmaking authority.

Unless otherwise ordered by the Commission in a particular proceeding, each application for an award under this part shall be assigned for decision to the official or decisionmaking body that entered the decision in the adversary adjudication. That official or decisionmaking body is referred to in this part as the "adjudicative officer."

[46 FR 61660, Dec. 18, 1981, as amended at 54 FR 26379, June 23, 1989]

§ 1016.105 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award, it must have stood in an adversary relationship to the position taken by agency counsel, and it must have prevailed on one or more of the issues raised by agency counsel. The term "party"is defined in 5 U.S.C. 504(b)(1)(B). The applicant must show that it meets all conditions of eligibility set out in this subpart and in Subpart B.

(b) The types of eligible applicants are as follows:

(1) An individual whose net worth did not exceed $2 million at the time the adversary adjudication was initiated;

(2) Any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization whose net worth does not exceed $7 million and which had no more than 500 employees at the time the adversary adjudication was initiated;

(3) Any organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis. Independent contractors under lease to motor carriers are not employees of the carriers under these rules. Also, agents for motor common carriers of household goods are not employees of their respective principal carriers.

(e) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(f) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

[46 FR 61660, Dec. 18, 1981, as amended at 54 FR 26379, June 23, 1989]

§ 1016.106 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record made in the adversary adjudication for which fees and other expenses are sought. The burden of proof that an award should not be made to an eligible prevailing applicant is on the agency counsel, which may avoid an award by showing that its position was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

[46 FR 61660, Dec. 18, 1981, as amended at 54 FR 26379, June 23, 1989]

§ 1016.107 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour, unless a higher fee is justified. 5 U.S.C. 504(b)(1)(A). However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

[46 FR 61660, Dec. 18, 1981, as amended at 54 FR 26379, June 23, 1989]

§ 1016.109 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before this agency and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

Subpart B—Information Required From Applicants

§ 1016.201 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Commission or other agencies in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Commission to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

[46 FR 61660, Dec. 18, 1981, as amended at 54 FR 26380, June 23, 1989]

§ 1016.202 Net worth exhibit.

(a) Each applicant must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 1016.105(f) of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes that there are legal grounds for withholding it from disclosure may file a motion to withhold the information from public disclosure. The burden is on the moving party to justify the confidentiality of the information.

[46 FR 61660, Dec. 18, 1981, as amended at 54 FR 26380, June 23, 1989]

§ 1016.203 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by another person or entity for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

Subpart C—Procedures for Considering Applications

§ 1016.301 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after an administratively final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, see the Commission's rules governing appellate procedures at §§ 1115.2 and 1115.3 to determine when a decision becomes administratively final.

[46 FR 61660, Dec. 18, 1981, as amended at 54 FR 26380, June 23, 1989]

§ 1016.302 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 1016.202(b) for confidential financial information.

§ 1016.303 Answer to application.

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted as justified.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1016.307.

[46 FR 61660, Dec. 18, 1981, as amended at 54 FR 26380, June 23, 1989]

§ 1016.304 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1016.307.

§ 1016.305 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not broaden the issues.

[46 FR 61660, Dec. 18, 1981, as amended at 54 FR 26380, June 23, 1989]

§ 1016.306 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 1016.307 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel or on his or her own initiative, the adjudicative officer may order further proceedings when necessary.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

[46 FR 61660, Dec. 18, 1981, as amended at 54 FR 26380, June 23, 1989]

§ 1016.308 Decision.

The adjudicative officer shall issue a decision on the application within 50 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Commission's or other agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

[46 FR 61660, Dec. 18, 1981, as amended at 54 FR 26380, June 23, 1989]

§ 1016.309 Agency review.

In the event the adjudicative officer is not the entire Commission, the applicant or agency counsel may seek review of the initial decision on the fee application, or the Commission may review the decision on its own initiative, in accordance with § 1115.2. If no appeal is taken, the initial decision becomes the action of the Commission 20 days after it is issued. If the adjudicative officer is the entire Commission, § 1115.3 applies.

[54 FR 26380, June 23, 1989]

§ 1016.310 Judicial review.

Judicial review of final Commission decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 1016.311 Payment of award.

An applicant seeking payment of an award shall submit to the appropriate official of the paying agency a copy of the Commission's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. Where the award is granted against the Interstate Commerce Commission the applicant shall make its submission to the Secretary, Interstate Commerce Commission, Washington, DC 20423. The Commission will pay the amount awarded to the applicant within 60 days of the applicant's submission unless the judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

PARTS 1020–1029—ENFORCEMENT

PART 1020—EXAMINATION OF RECORDS AND ACCOUNTS BY AGENTS OF COMMISSION

§ 1020.1 Examination of records and accounts.

Each and every motor carrier and broker subject to part II of the Interstate Commerce Act, and receivers, trustees, and representatives having control, direct or indirect, over or affiliated with any such motor carrier or broker, upon the demand of a special agent or an examiner of the Commission, and upon the presentation of proper credentials, shall forthwith permit such special agent or examiner to inspect and examine all such lands, buildings, or equipment of motor carriers and brokers used in connection with interstate or foreign operations, and all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing and kept or required to be kept by motor carriers and brokers subject to the act, and permit such special agent or examiner to make notes and copies of such papers as he deems wise.

(49 Stat. 546, as amended, 563, as amended; 49 U.S.C. 304, 320)

[32 FR 20015, Dec. 20, 1967]

PART 1021—ADMINISTRATIVE COLLECTION OF ENFORCEMENT CLAIMS

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1021.2 Enforcement claims and debtors.
1021.3 Enforcement collection designee.
1021.4 Notice of claim and demand.
1021.5 Agreement and release.
1021.6 Method of claim payment.

AUTHORITY: Sec. 3, 80 Stat. 309; 31 U.S.C. 952.

Source: 32 FR 20015, Dec. 20, 1967, unless otherwise noted.

§ 1021.1 Standards.

The regulations issued jointly by the Comptroller General of the United States and the Attorney General of the United States under section 3 of the Federal Claims Collection Act of 1966 (31 U.S.C. 951 et seq.) and published in 4 CFR parts 101 through 105 are hereby adopted by the Interstate Commerce Commission for the administrative collection of enforcement claims.

§ 1021.2 Enforcement claims and debtors.

(a) Enforcement claims are all separate civil penalty or forfeiture claims not exceeding $20,000 which may arise under the provisions of the Interstate Commerce Act or legislation supplementary thereto.

(b) Debtor is any person or corporation subject to civil penalties or forfeitures for violation of the provisions of the Interstate Commerce Act or legislation supplementary thereto.

§ 1021.3 Enforcement collection designee.

The Director, Office of Consumer Protection, Interstate Commerce Commission, is the Commission's designee to take all necessary action administratively to settle by collection, compromise, suspension or termination, enforcement claims within the contemplation of the Federal Claims Collection Act of 1966.

[45 FR 31374, May 13, 1980]

§ 1021.4 Notice of claim and demand.

Initiation of administrative collection of enforcement claims will be commenced by the enforcement collection designee mailing a letter of notice of claim and demand to the debtor. Such letter will state the statutory basis for the claim, a brief resume of the factual basis for the claim, the amount of the claim, and indicate the availability of the designee or his personal agent for discussion of the claim should the debtor so desire.

§ 1021.5 Agreement and release.

Upon the debtor's agreement to settle a claim, an Agreement and Release Form will be provided to the debtor in duplicate. This form, after reciting the statutory basis for the claim, will contain a statement to be signed in duplicate by the debtor evidencing his agreement to settlement of the claim for the amount stated in the agreement. Both copies of the signed agreement shall be returned to the collection designee. Upon final collection of the claim, one copy of the agreement and release shall be returned to the debtor with the release thereon signed by the enforcement collection designee.

§ 1021.6 Method of claim payment.

(a) Debtors: Debtors shall be required to settle claims by:

(1) Payment by bank cashier check or other instrument acceptable to designee.

(2) Installment payments by check after the execution of a promissory note containing an agreement for judgment.

(b) All checks or other instruments will be made out to "Interstate Commerce Commission," and after receipt will be forwarded to U.S. Treasury.

PART 1022—COOPERATIVE AGREEMENTS WITH STATES

Sec.
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1022.2 Extent of agreement.
1022.3 Cancellation.
1022.4 Exchange of information.
1022.5 Requests for assistance.
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1022.8 Supplemental agreements.

Authority: 49 U.S.C. 10101, 10321, and 11502.

Source: 55 FR 11197, Mar. 27, 1990, unless otherwise noted.

§ 1022.1 Eligibility.

Any State may agree with the Interstate Commerce Commission to enforce the economic laws and regulations of that State and the United States concerning highway transportation.

best copy available

§ 1022.2 Extent of agreement.

The written agreement, signed by a competent State authority and filed with the Commission's Office of the Secretary, shall specify the extent of the State's participation, as described below. The Commission will reciprocate to that extent.

§ 1022.3 Cancellation.

Either party may cancel or withdraw from all or part of a cooperative agreement by written notice indicating the effective date of such action.

§ 1022.4 Exchange of information.

Information acquired by a State agent, in his official duties, regarding violation of the economic laws of the United States concerning highway transportation or of the Commission's regulations, shall be communicated to the Regional Director of the Commission's Office of Compliance and Consumer Assistance.

§ 1022.5 Requests for assistance.

Either party to a cooperative agreement may request, in writing, the other's assistance in obtaining evidence to enforce the economic laws and regulations governing highway transportation. Such evidence, obtained as time, personnel, and funds permit, shall be transmitted to the State authority or Regional Director, as the case may be, together with the name and address of any agent or personnel available to testify in an enforcement action.

§ 1022.6 Joint investigation or inspection.

The Regional Director and appropriate State authority may agree to conduct a joint inspection or investigation of the property, equipment, or records of motor carriers or others, to enforce the pertinent economic laws and regulations. They shall decide the location, time, and objectives of the joint effort, and shall select the persons who will supervise it and make the necessary decisions. Any agent or personnel of either agency having knowledge of the facts shall be made available to testify in an enforcement action.

§ 1022.7 Joint administrative activities.

To facilitate the interchange of information and evidence, and the conduct of the joint effort and any ensuing administrative action, the Regional Director and appropriate State authority shall, when warranted, schedule joint conferences. They shall inform each other of their enforcement capabilities and of any changes in their regulations.

§ 1022.8 Supplemental agreements.

The Commission and State may agree to supplement their agreement to further implement 49 U.S.C. 11502.

PART 1023—STANDARDS FOR REGISTRATION OF CERTIFICATES AND PERMITS WITH STATES

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APPENDIX OF FORMS

AUTHORITY: 49 U.S.C. 11506.

SOURCE: 32 FR 20016, Dec. 20, 1967, unless otherwise noted.

Subpart A—Definitions

§ 1023.1 Definitions.

The following letters and words, when used in these Standards, shall have the following meanings, unless otherwise clearly apparent from the context:

(a) The words "driveaway operation" shall mean an operation in which any vehicle or vehicles, operated singly or in lawful combinations, new or used, not owned by the transporting motor carrier, constitute the commodity being transported;

(b) The letters "ICC" shall mean the Interstate Commerce Commission;

(c) The word "law" shall include constitutional and statutory provisions and rules and regulations adopted by a Commission;

(d) The words "motor carrier" shall mean a motor carrier of passengers or property holding operating authority issued by the Interstate Commerce Commission;

(e) The letters "NARUC" shall mean the National Association of Regulatory Utility Commissioners;

(f) The word "State" shall mean any of the several States or the District of Columbia, as the case may be;

(g) The words "State commission" or "commission" shall mean the commission, board or official which, under the laws of any State, possesses the jurisdiction to issue or deny certificates of public convenience and necessity or permits to motor carriers, or otherwise to regulate the business of transportation by motor vehicles in intrastate commerce over the highways of such State; and

(h) The word "vehicle" shall mean a self-propelled or motor-driven vehicle operated by a motor carrier under authority issued by the Interstate Commerce Commission.

§ 1023.2 Operations within borders of State.

Whenever these Standards refer to operations "within the borders" of a State, such operations shall be deemed to include interstate operations to, from, within or traversing such State.

Subpart B—Registration of ICC Operating Authority

§ 1023.11 When registration required.

Whenever a State requires a motor carrier to file and maintain a current record of its authority issued by the Interstate Commerce Commission permitting operation within the borders of such State, such motor carrier shall not exercise such authority within the borders of such State unless and until there shall have been filed with and approved by the commission of such State an application for the registration of such authority as prescribed by the provisions of this subpart, and there shall have been a compliance with all other requirements of this subpart: *Provided, however,* That a motor carrier shall only be required to file with such State commission that portion of its authority permitting operation within the borders of such State; *And provided further,* That a motor carrier shall not be required to file with such State commission an emergency or temporary operating authority having a duration of 30 consecutive days or less if such carrier has: (a) Registered its other authority and identified its vehicles or driveaway operation under the provisions of these standards; and (b) furnished to the State commission a telegram or other written communication describing such emergency or temporary operating authority and stating that operation thereunder shall be in full accord with the requirements of these standards.

§ 1023.12 Form and execution of application.

The application for the registration of such operating authority shall be in the form set forth in Form A appended to this part and made a part of this section. The application shall be printed on a rectangular card or sheet of paper 11 inches in height and 8½ inches in width. The application shall be duly completed and executed by an official of the motor carrier.

§ 1023.13 Filing of application.

The application for the registration of such operating authority shall be filed in duplicate with the commission of such State. The original, to which the copy of the ICC operating authority shall be attached, shall be retained by the State commission. The other copy of the application or an acknowledgment shall be transmitted to the motor carrier when the application is approved by the State commission. The application shall be accompanied by the fee, if any, prescribed by the law of such State: *Provided, however,* That such fee shall not exceed $25 for an application filed by a motor carrier who has not previously filed a currently effective application for registration of ICC operating authority with the Commission of such State: *And provided further,* That such fee shall not exceed $10 for an application filed by a motor carrier who has previously filed a currently effective application for the registration of ICC operating authority with such Commission.

[32 FR 20016, Dec. 20, 1967, as amended at 35 FR 2524, Feb. 4, 1970]

§ 1023.14 Prior registration; cancellation.

A motor carrier need not register under the provisions of this subpart any authority issued by the ICC permitting operation within the borders of a State, when the same was properly registered with the commission of such State at the time these standards became effective; *provided, however,* That if a motor carrier fails to register and identify its vehicles and driveaway operations with such State commission pursuant to subpart D of this part for 3 consecutive years, such commission may cancel the motor carrier's registration of ICC operating authority under this subpart upon thirty days notice to the carrier at its last known address, and the carrier shall not thereafter exercise its ICC authority within the borders of such State unless and until it shall have again registered such authority as prescribed by the provisions of this subpart and shall have complied with all other requirements of this part.

[32 FR 20016, Dec. 20, 1967, as amended at 41 FR 5395, Feb. 6, 1976]

§ 1023.15 Motor carrier name changes.

A motor carrier holding authority which has been registered with a state commission as required in § 1023.11 and which has had a name change approved by the ICC, shall file in duplicate such approval with the state commission on the Form A referred to in § 1023.12. The Form shall be clearly marked in the upper right-hand corner "Name Change Only" and shall be accompanied by the fee, if any, prescribed by the law of such state; *Provided, however,* That such fee shall not exceed $10.00.

[51 FR 12710, Apr. 15, 1986]

Subpart C—Designation of Process Agent

§ 1023.21 When designation required.

Whenever a State requires a motor carrier to file a designation of a local agent for service of process, such motor carrier shall not engage in interstate or foreign commerce within the borders of such State unless and until there shall have been filed with and accepted by the commission of such State a currently effective designation of such a local agent.

§ 1023.22 Filing of designation.

The motor carrier shall file such designation of a local agent for service of process with the commission of such State by showing the name and address of such agent on the uniform application for registration of interstate operating authority, as set forth in Form A appended to this part, or by furnishing such commission with a true copy of the designation of such agent filed with the Interstate Commerce Commission, *Provided, however,* That such designation on Form A need not be made if the designation has been filed with the State commission pursuant to 49 U.S.C. 10330(b).

[32 FR 20016, Dec. 20, 1967, as amended at 47 FR 8365, Feb. 26, 1982]

§ 1023.23 Qualifications of agent.

The provisions of this subpart shall not be construed in any way to affect the qualifications of a local agent for service of process as prescribed by State law.

Subpart D—Registration and Identification of Vehicles and Driveaway Operations

§ 1023.31 When registration and identification required.

Whenever a State requires a motor carrier to register and identify any vehicle (other than one used in driveaway operations) as operating under its authority issued by the Interstate Commerce Commission permitting operation within the borders of such State, or whenever a State requires a motor carrier, engaged in driveaway operations, to register and identify such operations as being conducted under its authority issued by the Interstate Commerce Commission permitting the conduct of same within the borders of such State, such motor carrier shall not operate such vehicle or engage in such driveaway operations under such authority within the borders of such State unless and until the vehicle or driveaway operations shall have been registered with the commission of such State in accordance with the provisions of this subpart, and there shall have been a compliance with all other requirements of this subpart.

§ 1023.32 Registration and identification.

(a) On or before the 31st day of December of each calendar year, but not earlier than the preceding 1st day of October, such motor carrier shall apply to the Commission of such State for the issuance of an identification stamp or stamps, or for the assignment of an identification number (as elected by the laws of such State), for the registration and identification of the vehicle or vehicles which it intends to operate, or driveaway operations which it intends to conduct, within the borders of such State during the ensuing year. If a State elects to require the use of identification stamps under the provisions of this subpart, the motor carrier may apply for such number of stamps as is sufficient to cover its vehicles or driveaway operations which it anticipates will be placed in operation or conducted during the period for which the stamps are effective. The motor carrier may thereafter file one or more supplemental applications for additional stamps if the need therefor arises or is anticipated.

(b) If the State commission determines that the motor carrier has complied with all applicable provisions of these standards, the commission shall issue to the motor carrier the number of identification stamps requested, or shall assign it an identification number, as the case may be.

(c) An identification stamp or number issued or assigned under the provisions of this subpart shall be used for the purpose of registering and identifying a vehicle or driveaway operations as being operated or conducted by a motor carrier under authority issued by the Interstate Commerce Commission, and shall not be used for the purpose of distinguishing between the vehicles operated by the same motor carrier. A motor carrier receiving an identification stamp or identification number under the provisions of this subpart shall not knowingly permit the use of same by any other person or organization.

(d) On or before the 31st day of December of each calendar year, but not earlier than the preceding 1st day of October, such motor carrier shall apply to the National Association of Regulatory Utility Commissioners, or to the Commission of any State in which it is permitted to operate pursuant to authority issued by the Interstate Commerce Commission, for the issuance of a sufficient supply of uniform identification cab cards for use in connection with the registration and identification of the vehicle or vehicles which it intends to operate, or driveaway operations which it intends to conduct, within the borders of such State during the ensuing year.

(e) The NARUC or the State commission, as the case may be, shall issue to the motor carrier the number of cab cards requested. A motor carrier receiving a cab card under the provisions of this subpart shall not knowingly permit the use of same by any other person or organization. Prior to operating a vehicle, or conducting a driveaway operation, within the borders of such State during the ensuing year, the motor carrier shall place one of such identification stamps or such identification number on the back of a cab card in the square bearing the name of such State in such a manner that the same cannot be removed without defacing it. The motor carrier shall thereupon duly complete and execute the form of certificate printed on the front of the cab card so as to identify itself and such vehicle or driveaway operation, and shall enter the appropriate expiration date in the space provided below the certificate. Such expiration date shall be within a period of sixteen months from the date the cab card is executed and shall not be later in time than the expiration date of any identification stamp or number placed on the back thereof, and, in the case of a vehicle leased by the motor carrier, such expiration date shall not exceed the expiration date of the lease.

(f) The registration and identification of a vehicle or driveaway operations under the provisions of this subpart and the identification stamp or number evidencing same and the cab card prepared therefor shall become void on the 1st day of February in the succeeding calendar year, unless such registration is terminated prior thereto.

[32 FR 20016, Dec. 20, 1967, as amended at 36 FR 3417, Feb. 24, 1971; 38 FR 33773, Dec. 7, 1973; 42 FR 6370, Feb. 2, 1977; 47 FR 8365, Feb. 26, 1982; 51 FR 12710, Apr. 15, 1986]

§ 1023.33 Form and execution of application for identification stamps or number.

The application for the issuance of such identification stamps or number shall be in the form set forth in Form B appended to this part and made a part of this section. The application shall be printed on a rectangular card or sheet of paper 11 inches in height and 8½ inches in width. The application shall be duly completed and executed by an official of the motor carrier, and shall be accompanied by the fee, if any, prescribed by the law of such State; provided, however, that such fee shall not exceed $10 for the issuance of each such identification stamp; and provided further (when the State Commission assigns an identification number in lieu of issuing an identification stamp or stamps), that such fee shall not exceed $10 for each vehicle operated under the authority of the motor carrier identified in the cab card bearing such identification number.

[32 FR 20016, Dec. 20, 1967, as amended at 35 FR 2525, Feb. 4, 1970; 36 FR 3417, Feb.

24, 1971; 38 FR 33773, Dec. 7, 1973; 47 FR 8366, Feb. 26, 1982]

§ 1023.34 Execution of application for cab card.

The application for the issuance of such cards shall be duly executed by an official of the motor carrier.

[33 FR 19250, Dec. 25, 1968]

§ 1023.35 Form of identification stamp or number.

Any identification stamp issued under the provisions of this subpart by a State commission shall bear its name or symbol and such other distinctive markings or information, if any, as the Commission deems appropriate. In addition, such stamp shall bear an expiration date of the "1st day of February in the succeeding calendar year" as provided in § 1023.32(g). The stamp shall be in the shape of a square and shall not exceed 1 inch in diameter. Any identification number issued by a State commission under the provisions of this subpart shall not exceed the dimensions of a square 1 inch in diameter.

[32 FR 20016, Dec. 20, 1967, as amended at 36 FR 3417, Feb. 24, 1971]

§ 1023.36 Form of cab card.

The cab card referred to above shall be in the form set forth in Form D appended to this part and made a part of this section and shall bear the seal of the NARUC. The cab card shall be printed on a rectangular card 11 inches in height and 8½ inches in width.

[32 FR 20016, Dec. 20, 1967, as amended at 33 FR 19250, Dec. 25, 1968]

§ 1023.37 Use of cab cards in connection with vehicles not used in driveaway operations.

In the case of a vehicle not used in a driveaway operation, the cab card shall be maintained in the cab of such vehicle for which prepared whenever the vehicle is operated under the authority of the carrier identified in the cab card. Such cab card shall not be used for any vehicle except the vehicle for which it was originally prepared. A motor carrier may prepare two or more cab cards which are effective for the same vehicle at the same time.

[32 FR 20016, Dec. 20, 1967, as amended at 48 FR 22927, May 23, 1983]

§ 1023.38 Use of cab cards in driveway operations.

In the case of a driveaway operation, the cab card shall be maintained in the cab of the vehicle furnishing the motive power for the driveaway operation whenever such an operation is conducted under the authority of the carrier identified in the cab card.

§ 1023.39 Inspection of the cab card.

A cab card shall, upon demand, be presented by the driver to any authorized Government personnel for inspection.

§ 1023.40 Destruction of cab cards; transfer.

(a) Each motor carrier shall destroy a cab card immediately upon its expiration, except as otherwise provided in the proviso to paragraph (b) of this section.

(b) A motor carrier discontinuing the use of a vehicle, for which a cab card has been prepared, shall nullify the cab card at the time of such discontinuance: *Provided, however,* That if such carrier provides a newly acquired vehicle in substitution therefor, each identification stamp and number placed on the cab card prepared for such discontinued vehicle, if such card is still in the possession of the carrier, may be transferred to the substitute vehicle, or any subsequently substituted vehicle, by compliance with the following procedure:

(1) Such motor carrier shall duly complete and execute the form of certificate printed on the front of a new cab card, so as to identify itself and the substitute vehicle and shall enter the appropriate expiration date in the space provided below such certificate;

(2) Such motor carrier shall indicate the date it terminated use of the discontinued vehicle by entering same in the space provided for an early expiration date which appears below the certificate of the cab card prepared for such vehicle; and

(3) Such motor carrier shall affix the cab card prepared for the substitute vehicle to the front of the cab card prepared for the discontinued vehicle, by permanently attaching the upper left-hand corners of both cards together in such a manner as to permit inspection of the contents of both cards, and thereupon, each identification stamp or number appearing on the back of the card prepared for the discontinued vehicle shall be deemed to apply to the operation of the substitute vehicle.

(c) A motor carrier filing an application with a state commission pursuant to § 1023.15 shall thereafter reflect its new name on each of its cab cards by compliance with the following procedure:

(1) Such motor carrier shall duly complete and execute the form of certificate printed on the front of a new cab card, so as to identify its new name and the vehicle, and shall enter the appropriate expiration date in the space provided below such certificate;

(2) Such motor carrier shall indicate the date it changed its name by entering same in the space provided for an early expiration date which appears below the certificate of the cab card in the former name and prepared for such vehicle; and

(3) Such motor carrier shall affix the cab card in the new name to the front of the cab card in the former name by permanently attaching the upper left-hand corners of both cards together in such a manner as to permit inspection of the contents of both cards, and thereupon, each identification stamp or number appearing on the back of the card in the former name shall be deemed to apply to the operation of the vehicle in the new name.

[36 FR 3417, Feb. 24, 1971, as amended at 38 FR 33773, Dec. 7, 1973; 42 FR 6370, Feb. 2, 1977; 51 FR 12710, Apr. 15, 1986]

§ 1023.41 Alteration of cab card; replacement.

(a) Any erasure, improper alteration, or unauthorized use of a cab card shall render it void.

(b) If a cab card is lost, destroyed, mutilated, or becomes illegible, a new cab card may be prepared and new identification stamps or numbers may be issued therefor upon application by the motor carrier and upon payment of the same fee prescribed for the original issuance thereof, if any.

§ 1023.42 Identification.

No State shall require a motor carrier to display external identification upon a vehicle other than such identification as is required by regulations of the Interstate Commerce Commission. Nothing in these standards shall be construed to affect State requirements as to the external identification of vehicles to indicate the payment of a State tax or fee imposed for revenue purposes or for any other purpose not within the purview of subsection (b) of section 202 of the Interstate Commerce Act 49 U.S.C., section 302(b)(2).

Subpart E—Evidence of Liability Security

§ 1023.51 When liability insurance certificate or surety bond required.

Whenever a State requires a motor carrier to file and maintain evidence of currently effective bodily injury and property damage liability security, such motor carrier shall not engage in interstate or foreign commerce within the borders of such State unless and until there shall have been filed with and accepted by the commission of such State a currently effective certificate of insurance or surety bond as prescribed by the provisions of this subpart, and there shall have been a compliance with all other requirements of this subpart.

§ 1023.52 Form and execution of liability insurance certificate.

The certificate of insurance referred to in the preceding section shall state that the insurer has issued to such motor carrier a policy of insurance which by endorsement provides automobile bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the law of such State. The certificate shall be in the form set forth in Form E appended to this part and made a part of this section. The certificate shall be printed on a rectangular card 5 inches in height and 8 inches in width. The certificate shall be duly completed and executed by such insurer.

§ 1023.53 Form and execution of liability insurance endorsement.

The endorsement referred to in the preceding section shall be attached to such insurance policy and shall form a part of it. The endorsement shall be in the form set forth in Form F appended to this part and made a part of this section. The endorsement shall be printed on a rectangular card or sheet of paper 5 inches in height and 8 inches in width. The endorsement shall be duly completed and executed by the insurer.

§ 1023.54 Form and execution of liability surety bond.

The surety bond referred to in § 1023.51 shall be in the form set forth in Form G appended to this part and made a part of this section. The bond shall be printed on a rectangular card 5 inches in height and 8 inches in width. The bond shall be duly completed and executed by the surety and principal.

§ 1023.55 Qualifications of insurer or surety.

The provisions of this subpart shall not be construed in anyway to affect the qualifications of an insurer or surety as prescribed by State law.

Subpart F—Evidence of Cargo Security

§ 1023.61 When cargo insurance certificate or surety bond required.

Whenever a State requires a motor carrier to file and maintain evidence of currently effective cargo security, such motor carrier shall not engage in interstate or foreign commerce within the borders of such State unless and until there shall have been filed with and accepted by the commission of such State a currently effective certificate of insurance or surety bond as prescribed by the provisions of this subpart, and there shall have been a compliance with all other requirements of this subpart.

§ 1023.62 Form and execution of cargo insurance certificate.

The certificate of insurance referred to in the preceding section shall state that the insurer has issued to such motor carrier a policy of insurance which by endorsement provides cargo insurance covering the obligations imposed upon such motor carrier by the provisions of the law of such State. The certificate shall be in the form set forth in Form H appended to this part and made a part of this section. The certificate shall be printed on a rectangular card 5 inches in height and 8 inches in width. The certificate shall be duly completed and executed by such insurer.

§ 1023.63 Form and execution of cargo insurance endorsement.

The endorsement referred to in the preceding section shall be attached to such insurance policy and shall form a part of it. The endorsement shall be in the form set forth in Form I appended to this part and made a part of this section. The endorsement shall be printed on a rectangular card or sheet of paper 5 inches in height and 8 inches in width. The endorsement shall be duly completed and executed by the insurer.

§ 1023.64 Form and execution of cargo surety bond.

The surety bond referred to in § 1023.61 shall be in the form set forth in Form J appended to this part and made a part of this section. The bond shall be printed on a rectangular card 5 inches in height and 8 inches in width. The bond shall be duly completed and executed by the surety and principal.

§ 1023.65 Qualifications of insurer or surety.

The provisions of this subpart shall not be construed in any way to affect the qualifications of an insurer or surety as prescribed by State law.

Subpart G—Notice of Security Cancellation

§ 1023.71 Notice of insurance cancellation.

An insurer under the provisions of subparts E and F of these standards shall give to the State commission notice of the cancellation of motor carrier bodily injury and property damage liability insurance or motor carrier cargo insurance, as the case may be, by filing with the commission the form of notice set forth in Form K appended to this part and made a part of this section. The notice shall be printed on a rectangular card 5 inches in height and 8 inches in width. The notice shall be duly completed and executed by the insurer.

§ 1023.72 Notice of bond cancellation.

A surety or motor carrier under the provisions of Subparts E and F of these standards shall give to the State commission notice of the cancellation of motor carrier bodily injury and property damage liability surety bond or motor carrier cargo surety bond, as the case may be, by filing with the commission the form of notice set forth in Form L appended to this part and made a part of this section. The notice shall be printed on a rectangular card 5 inches in height and 8 inches in width. The notice shall be duly completed and executed by the surety or motor carrier.

Subpart H—Evidence of Self-insurance

§ 1023.81 Evidence of self-insurance.

Whenever a State requires a motor carrier to file and maintain evidence of currently effective qualifications as a self-insurer under the rules and regulations of the Interstate Commerce Commission, such motor carrier shall not engage in interstate or foreign commerce within the borders of such State unless and until there shall have been filed with and accepted by the commission of such State a true and readily legible copy of the currently effective ICC order authorizing such motor carrier to self-insure under the provisions of the Interstate Commerce Act.

Subpart I—Interim Operations

§ 1023.91 Interim operations.

Whenever a State commission fails to act upon a filing made under subparts B, C, D, E, and F of these standards within 30 days after receipt of same, the motor carrier for whose benefit such filing was made may begin operation within the borders of such State in such manner as would have been otherwise authorized if the filing had been acted upon favorable by the State commission within such period of 30 days. The motor carrier may continue such operation under the provisions of this section until such time as the State commission acts upon such filing.

Subpart J—Miscellaneous

§ 1023.101 Reproduction of form.

(a) In order to achieve complete uniformity in the reproduction of the Uniform Identification Cab Card, as set forth in Form D appended to this part, the NARUC shall reproduce and supply an adequate quantity of such form for use under the provisions of these Standards. No person or organization, other than the NARUC, shall reproduce such form for use under the provisions of these Standards, and any such form reproduced by such an unauthorized person or organization is hereby declared to be void.

(b) The NARUC, upon request, shall supply such form to the State Commissions and motor carriers. The NARUC shall fix and charge a reasonable fee in connection with the reproduction and supply of such form. Each state Commission supplying such form shall charge the fee fixed therefor by the NARUC.

[33 FR 19250, Dec. 25, 1968]

§ 1023.102 Completion of forms.

A typewriter or indelible ink shall be used in entering information in the blank spaces appearing on the forms prepared under the provisions of these standards.

§ 1023.103 Violations declared unlawful; criminal penalties; civil remedies.

Any violation of the provisions of these standards is hereby declared to be unlawful. Nothing in these standards shall be construed to prevent a State from imposing criminal penalties upon any person or organization violating any provision of these standards or from providing or applying civil remedies or sanctions in connection with such violations.

§ 1023.104 State taxes and fees.

Nothing in these standards shall be construed to affect the collection or method of collection of taxes or fees by a State from motor carriers for the operation of vehicles within the borders of such State.

§ 1023.105 Use of fees.

Each State collecting fees pursuant to these Standards is urged to use such fees, or counterpart funds, for the purpose of defraying the cost of the regulation of carriers by highway operating within the borders of such State and the enforcement of laws pertaining thereto.

[38 FR 33773, Dec. 7, 1973]

§ 1023.106 Reciprocity.

Nothing in these Standards shall be construed to affect the right of a State to enter into reciprocal agreements or arrangements with other States for the purpose of reducing or eliminating the maximum fees prescribed in these Standards.

[38 FR 33773, Dec. 7, 1973]

APPENDIX OF FORMS

FORM A

UNIFORM APPLICATION FOR REGISTRATION OF OPERATING AUTHORITY ISSUED BY ICC

To: ———————— (Name of State commission) Date ————
Applicant ————————
Street ————————
City ———— State ————
ICC Operating Authority No. MC ————
Type of route: ☐ Certificate ☐ Permit ☐ TA—— ☐ Regular ☐ Irregular
Type of carrier: ☐ Property ☐ Passenger ☐ Common ☐ Contract
Give principal office address, if different than above: Street ———— City ———— State ————
If individual, give name and address:

————————

If corporation, give State in which incorporated: ————————
Name of president ———— Name of secretary ————
If partnership, give names and addresses of partners: ————————

————————

————————

Process agent for State (This part may be omitted if the applicant has previously filed with the State commission, or attaches hereto, a current copy of its designation filed with ICC):

Name ———— Street ————
City ———— State ————

I, the undersigned, under penalty for false statement, do hereby certify that the above information is true and correct and that I am authorized to execute and file this document on behalf of the above applicant. (Federal penalties, maximum of $10,000 or imprisonment for 5 years, or both, 18 U.S.C. 1001; State penalties as prescribed by law.)

————————
(Signature)

————————
(Title)

Instructions: File this application in duplicate with ICC operating authority attached to original. When application is approved, the copy will be returned to the applicant.

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

FORM B

UNIFORM APPLICATION FOR REGISTRATION AND IDENTIFICATION OF VEHICLES OR DRIVEAWAY OPERATIONS OPERATED OR CONDUCTED UNDER AUTHORITY ISSUED BY ICC

To: ———————— (Name of State commission) Date ————
Applicant ————————
Street ————————
City ———— State ————
ICC Operating Authority Number MC ————

The above described applicant hereby applies for the issuance of ———— (Number) identification stamp(s), or for the assignment of an identification number (as elected by the laws of such State), for the registration and identification of the vehicle or vehicles which the applicant intends to operate, or driveaway operations which it intends to conduct, within the borders of such State during the period ending at twelve midnight on January 31, 19——, for which such identification stamp(s) or number is effective. The operation of such vehicle or vehicles, or the conduct of such driveaway operations, shall be pursuant to authority issued to the applicant by the Interstate Commerce Commission.

The applicant shall not knowingly permit any other person or organization to use the identification stamp(s) or number issued or assigned pursuant to this application.

I, the undersigned, under penalty for false statement, do hereby certify that the above information is true and correct and that I am authorized to execute and file this document on behalf of the above applicant. (Federal penalties, maximum of $10,000 or imprisonment for 5 years, or both, 18 U.S.C. 1001; State penalties as prescribed by law.)

Signature ————————————

Title ————————————

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant ot the provisions of section 202(b)(2) of the Interstate commerce act (49 U.S.C., sec. 302(b)(2)).

FORM D

UNIFORM IDENTIFICATION CAB CARD OPERATING MOTOR CARRIER

ICC Operating Authority Number MC ———

Name of carrier ————————————

Street ————————————

City ————————————

State ————————————

Vehicle

Type ——————— (Tractor-truck-bus-driveaway) Make* ———————

Year* ——————— Serial No.* ———————

State of vehicle registration** ———————

Name of owner of vehicle* ———————

The above described vehicle or driveaway operation is being operated or conducted under authority granted by the Interstate Commerce Commission to the above described motor carrier. Where required by State law, such vehicle or driveaway operation has been registered with each State whose current identification stamp or number is placed on the reverse side of this card and there has been filed with each such State (to the extent required by such State) the information authorized by section 202(b)(2) of the Interstate Commerce Act (49 U.S.C. sec. 302 (b)(2)) and the rules and regulations promulgated thereunder.

The above described vehicle or driveaway operation has been identified in conformity with the rules and regulations of the Interstate Commerce Commission.

I, the undersigned, under penalty for false statement, do hereby certify that the above information is true and correct and that I am authorized to execute this document on behalf of the above carrier. (Federal penalties, maximum of $10,000 or imprisonment for 5 years, or both, 18 U.S.C. 1001; State penalties as prescribed by law.)

Signature ————————————

Title ————————————

Date executed ————————————

This card expires at 12:01 a.m., February 1, 19- or ———, —19—, whichever is earlier.

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C. sec. 302(b)(2)).

*Not applicable to driveaway operations.

**If the State of vehicle registration changes during the period this cab card is effective, the motor carrier shall immediately indicate the change above by marking out the name of the State listed and inserting the name of the new State of vehicle registration in lieu thereof. This change shall be initialed by an official of the motor carrier.

REVERSE SIDE OF CAB CARD

Alabama	Alaska	Arkansas	Arizona	California	Colorado
Connecticut	Delaware	District of Columbia	Florida	Georgia	Hawaii
Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky
Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota
Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire
New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio
Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	South Dakota

REVERSE SIDE OF CAB CARD—Continued

Tennessee	Texas	Utah	Vermont	Virginia	Washington
West Virginia	Wisconsin	Wyoming			

FORM E

UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY CERTIFICATE OF INSURANCE

(Executed in triplicate)

Filed with ——————— (Name of commission) (hereinafter called commission)

This is to certify, that the ——————— (Name of company) (hereinafter called Company) of ——————————— (Home office address of company) has issued to ——————— (Name of motor carrier) of ——————— (Address of motor carrier) a policy or policies of insurance effective from ——————— 12:01 a.m. standard time at the address of the insured stated in said policy or policies and continuing until canceled as provided herein, which, by attachment of the uniform motor carrier bodily injury and property damage liability insurance endorsement, has or have been amended to provide automobile bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the State in which the commission has jurisdiction or regulations promulgated in accordance therewith.

Whenever requested, the company agrees to furnish the commission a duplicate original of said policy or policies and all endorsements thereon.

This certificate and the endorsement described herein may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the State commission, such thirty (30) days' notice to commence to run from the date notice is actually received in the office of the commission.

Countersigned at ———————

———————————
(Street address)

———————————
(City) (State) (Zip code)

this ——— day of ——— 19—

———————————
(Authorized company representative)

Insurance company file No. ———
(Policy No.)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

FORM F

UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE ENDORSEMENT

It is agreed that:

1. The certification of the policy, as proof of financial responsibility under the provisions of any State motor carrier law or regulations promulgated by any State commission having jurisdiction with respect thereto, amends the policy to provide insurance for automobile bodily injury and property damage liability in accordance with the provisions of such law or regulations to the extent of the coverage and limits of liability required thereby; provided only that the insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except by reason of the obligation assumed in making such certification.

2. The uniform motor carrier bodily injury and property damage liability certificate of insurance has been filed with the State commissions indicated on the reverse side hereof.

3. This endorsement may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the State commission with which such certificate has been filed, such thirty (30) days' notice to commence to run from the date the notice is actually received in the office of such commission.

Attached to and forming part of policy No. ——————— issued by ———————, herein called company, of ——————— to ——————— of

Dated at ——————— this ——— day of ——————— 19

Countersigned by ———————
(Authorized company representative)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

REVERSE SIDE OF UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE ENDORSEMENT

✓—Indicates State Commissions with whom uniform motor carrier bodily injury and property damage liability certificate of insurance has been filed

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho

Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri

Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania

Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

FORM G

UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY SURETY BOND

(Executed in triplicate)

Know all men by these presents, that we —————————— (Name of motor carrier principal) of ——————— (City) ——————, (State) as principal (hereafter called principal), and —————————————— (Name of surety), a corporation created and existing under the laws of the State of ——————————, with principal office at ——————————— (City) ————, (State) as Surety (hereinafter called surety), are held and firmly bound unto the State of —————————— in the sum or sums hereinafter provided for which payment, well and truly to be made, the principal and surety hereby bind themselves, their successors and assigns, firmly by these presents.

The condition of this obligation is such that:

Whereas, the principal is or intends to become a motor carrier subject to the laws of such State and the rules and regulations of ——————————————

——————————————

(Name of commission)

(hereinafter called commission), relating to insurance or other security for the protection of the public, and has elected to file with the commission a surety bond conditioned as hereinafter set forth; and

Whereas, this bond is written to assure compliance by the principal as a motor carrier of passengers or property with the laws of such State and the rules and regulations of the commission relating to insurance or other security for the protection of the public, and shall inure to the benefit of any person or persons who shall recover a final judgment or judgments against the principal for any of the damages herein described.

Now, therefore, if every final judgment recovered against the principal for bodily injury to or the death of any person or loss of or damage to the property of others, sustained while this bond is in effect, and resulting from the negligent operation, maintenance, or use of motor vehicles in transportation (but excluding injury to or death of the principal's employees while engaged in the course of their employment, and loss of or damage to property of the principal and property transported by the principal designated as cargo), shall be paid, then this obligation shall be void, otherwise to remain in full force and effect.

Within the limits hereinafter provided, the liability of the surety extends to such losses, damages, injuries, or deaths regardless of whether such motor vehicles are specifically described herein and whether occurring on the route or in the territory authorized to be served by the principal or elsewhere.

This bond is effective from ——— ——— (12:01 a.m., standard time, at the address of the principal as stated herein) and shall continue in force until terminated as hereinafter provided. The principal or the surety may at any time terminate this bond by written notice to the commission, such termination to become effective not less than thirty (30) days after actual receipt of said notice by the commission. The surety shall not be liable hereunder for the payment of any judgment or judgments against the principal for bodily injury to or the death of any person or persons or loss of or damage to property resulting from accidents which occur after the termination of this bond as herein provided, but such termination shall not affect the liability of the surety hereunder for the payment of any such judgment or judgments resulting from accidents which occur during the time the bond is in effect.

The liability of the surety on each motor vehicle shall be the limits prescribed in the laws of such State and the rules and regulations of the commission governing the filing of surety bonds, which were in effect at the time this bond was executed, and will be a continuing one notwithstanding any recovery hereunder.

In witness whereof, the said principal and surety have executed this instrument on the ——— day of ———, 19———

———
(Principal)

By ———

[AFFIX CORPORATE SEAL]

———
(Surety)

———
(City) (State)

By ———

Countersigned at ——— this ——— day of ——— 19—

Bond No. ———
(Registered resident agent)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C. sec. 302(b)(2)).

FORM H

UNIFORM MOTOR CARRIER CARGO CERTIFICATE OF INSURANCE

(Executed in triplicate)

Filed with ——— (Name of commission) (hereinafter called commission)

This is to certify, that the ——— (Name of company) (hereinafter called company) of ——— (Home office address of company) has issued to ——— (Name of motor carrier) of ——— (Address of motor carrier) a policy or policies of insurance effective from ——— 12:01 a.m. standard time at the address of the insured stated in said policy or policies and continuing until canceled as provided herein, which, by attachment of the uniform motor carrier cargo insurance endorsement, has or have been amended to provide cargo insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the State in which the commission has jurisdiction or regulations promulgated in accordance therewith.

Whenever requested, the company agrees to furnish the commission a duplicate original of said policy or policies and all endorsements thereon.

This certificate and the endorsement described herein may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the State commission, such thirty (30) days' notice to commence to run from the date notice is actually received in the office of the commission.

Countersigned at ———
(Street address)

———
(City) (State) (ZIP Code)

this——— day of ——— 19 —

———
(Authorized company representative)

Insurance company file No. ———
(Policy No.)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

FORM I

UNIFORM MOTOR CARRIER CARGO INSURANCE ENDORSEMENT

It is agreed that:

1. The certification of the policy as proof of responsibility under the provisions of any State motor carrier law or regulations promulgated by any State commission having jurisdiction with respect thereto, amends the policy to provide insurance for motor carrier cargo liability in accordance with the provisions of such law or regulations to the extent of the coverage and limits of liability required thereby; provided only that the insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except by reason of the obligation assumed in making such certification.

2. The uniform motor carrier cargo certificate of insurance has been filed with the State commissions indicated on the reverse side hereof.

3. This endorsement may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the State commission with which such certificate has been filed, such thirty (30) days' notice to commence to run from the date the notice is actually received in the office of such commission.

Attached to and forming part of policy No. ———— issued by ————, herein called company, of ———— to ———— of ————

Dated at ———— this —— day of ———— 19—

Countersigned by ————

————————————————

(Authorized company representative)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

REVERSE SIDE OF UNIFORM MOTOR CARRIER CARGO INSURANCE ENDORSEMENT

✓—Indicates State Commissions with whom uniform motor carrier cargo certificate of insurance has been filed

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho

Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri

Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania

Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

FORM J

UNIFORM MOTOR CARRIER CARGO SURETY BOND

(Executed in triplicate)

Know all men by these presents, that we,

————————————————

(Name of motor carrier principal)

of ———— (City), ———— (State) as principal (hereinafter called principal), and ———————— (Name of surety), a corporation created and existing under the laws of the State of ————, with principal office at ———— (City), ———— (State), as surety (hereinafter called surety), are held and firmly bound unto the State of ————in the sum or sums hereinafter provided for which payment, well and truly to be made, the principal and surety hereby bind themselves, their successors and assigns, firmly by these presents.

The condition of this obligation is such that:

Whereas, the principal is or intends to become a motor carrier subject to the laws of such State and the rules and regulations of the ———————— (Name of commission) (hereinafter called commission), relating to insurance or other security for the protection of shippers and consignees, and has elected to file with the Commission a bond conditioned as hereinafter set forth, and

Whereas, this bond is written to assure compliance by the principal as a motor carrier with the laws of such State and the rules and regulations of the commission relating to insurance or other security for the protection of shippers and consignees, and shall inure to the benefit of any and all shippers or consignees to whom the principal may be held liable for any of the damages herein described.

Now, therefore, if the principal shall make compensation to shippers and consignees for all losses of or damages to property belonging to them which shall, while this bond is in effect, come into the possession of the principal in connection with its transportation service, regardless of whether such losses or damages occur while said property is in a motor vehicle, terminal, warehouse or other place, for which losses or damages the principal may be held legally liable, then this obligation shall be void, otherwise it shall remain in full force and effect.

The liability of the surety for the limits hereinafter provided shall be a continuing one notwithstanding any recovery hereunder, and extends to such losses or damages regardless of whether the motor vehicles, terminals, warehouses, and other facilities used in connection with the transportation service of the principal are specifically described herein or not, and whether occurring on the route or in the territory authorized to be served by the principal or elsewhere.

The liability of the surety for any such loss or damage shall be the limits prescribed in the laws of such State and the rules and regulations of the commission governing the filing of surety bonds, which were in effect at the time this bond was executed, and will be a continuing one notwithstanding any recovery hereunder.

This bond is effective from ———— (12:01 a.m., standard time, at the address of the principal as stated herein) and shall continue in force until terminated as hereinafter provided. The principal or the surety may at any time terminate this bond by written notice to the commission, such termination to become effective not less than thirty (30) days after actual receipt of said notice by the commission.

The surety shall not be liable hereunder for the payment of any of the losses or damages hereinbefore described which arise on property coming into the possession of the principal in connection with its transportation service after the termination of this bond as herein provided, but such termination shall not affect the liability of the surety hereunder for the payment of any such losses or damages arising on property coming into the possession of the principal in connection with its transportation service prior to the date such termination becomes effective.

In witness whereof, the said principal and surety have executed this instrument on the —— day of ————, 19——.

————————
(Principal)

By ————————

————————
(Surety)

[AFFIX CORPORATE SEAL]

————————
(City) (State)

By ————————

Countersigned at ———— this — day of ———— 19—

Bond No. ————————
(Registered resident agent)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

FORM K

UNIFORM NOTICE OF CANCELLATION OF MOTOR CARRIER INSURANCE POLICIES

(Executed in triplicate)

Check type canceled: BI and PD☐Cargo☐

Filed with ———— (Name of commission) (hereinafter called commission)

This is to advise that under the terms of a policy or policies issued to ————

————————
(Name of motor carrier)

of ————————
(Address of motor carrier)

by ————————
(Name of company)

of ————————
(Address)

said policy or policies, including any and all endorsements forming a part thereof or certificates issued in connection therewith, is (are) hereby canceled effective as of the ———— day of ————, 19——, 12:01 a.m., standard time at the address of the Insured as stated in said policy or policies provided such date is not less than thirty (30) days after the actual receipt of this notice by the commission.

————————————
(Signature of insurer)
Insurance Company File No. ————————
(Policy No.)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

FORM L

UNIFORM NOTICE OF CANCELLATION OF MOTOR CARRIER SURETY BONDS

(Executed in triplicate)

Check type canceled: BI and PD ☐Cargo ☐

Filed with ———————— (Name of commission) (hereinafter called commission)

This is to advise that, under the terms of surety bond(s) executed in behalf of

————————————————————
(Name of principal)
of ————————————————————
(Address)
by ————————————————————
(Name of surety)
of ————————————————————
(Address)

said bond(s), including any and all riders or certificates attached thereto or issued in connection therewith, is (are) hereby canceled effective as of the ———————— day of ————————, 19——, 12:01 a.m., standard time at the address of the Principal as stated in said bond(s) provided such date is not less than thirty (30) days after the actual receipt of this notice by the commission.

————————————————————
(Signature of principal or surety)
Insurance company File No. ——————
(Policy No.)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

[32 FR 20016, Dec. 20, 1967, as amended at 33 FR 19250, Dec. 25, 1968; 42 FR 6370, Feb. 2, 1977]

PARTS 1030–1039—CARRIERS SUBJECT TO PART I, INTERSTATE COMMERCE ACT

PART 1030—FILING OF CONTRACTS BY COMMON CARRIERS

§ 1030.1 Filing of contracts, agreements, or arrangements with other common carriers.

(a) Common carriers subject to part I of the Interstate Commerce Act are hereby relieved from the provisions of section 6 (5) of said act requiring the filing with the Commission of copies of all contracts, agreements, and arrangements with other common carriers, except that common carriers subject to part I of said act shall file with the Commission copies of all such contracts, agreements, and arrangements as shall have been or may hereafter be required to be filed by order, rule or regulation of the Commission, including any requirement contained in any annual or other report form.

(b) The Commission reserves the right to modify this regulation upon appropriate notice, at any time in the future, by enlarging or reducing the specifications contained herein, and this regulation is subject to the further condition that the carrier promptly furnish upon request of the Commission, or any bureau thereof, a copy of any contract, agreement, or arrangement as may be requested by such bureau or Commission.

(Sec. 12, 24 Stat. 383, as amended, sec. 5, 63 Stat. 486; 49 U.S.C. 12, 6)

[32 FR 20023, Dec. 20, 1967]

PART 1031—DIVISIONS OF JOINT RATES APPLICABLE TO RAILWAY FUEL—[RESERVED]

PART 1033—CAR SERVICE

AUTHORITY: 49 U.S.C. 10321, 11121; and 5 U.S.C. 553.

EDITORIAL NOTE: For service orders issued under this part before 1986 but not carried in the Code of Federal Regulations, see the List of CFR Sections Affected in the Finding Aids section of this volume.

PART 1034—ROUTING OF TRAFFIC

EDITORIAL NOTE: For service orders issued under this part before 1983 but not carried in the Code of Federal Regulations, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 1034.1 Temporary authority.

(a) *Authority.* Any railroad subject to regulation under 49 U.S.C. 10501 may reasonably divert or reroute traffic to other carriers, if it is unable due to circumstances beyond its control promptly to transport traffic over a portion of its lines. Traffic necessarily diverted under this authority shall be rerouted to preserve as much as possible the participation and revenues of other carriers provided in the original routing. This authority may be exercised for no more than 30 days following the day on which the rerouting begins. If a carrier needs more than 30 days before its disability or the disability of a receiving carrier is cured, it may automatically extend its rerouting for additional 30-day periods. To extend the period, it must submit a written or telegraphic notice to the Association of American Railroads and the Commission's Railroad Service Board explaining why the rerouting is necessary, when it began, when the disability occurred, why an extension is necessary, the specific lines disabled, the rerouting to be continued, which shippers are affected, and any other important facts.

(b) *Concurrence by carriers.* A railroad rerouting traffic must receive the concurrence of other railroads to which the traffic will be diverted or rerouted, before the rerouting or diversion begins. A rerouting carrier must also confirm the inability of a disabled receiving carrier to handle the traffic before rerouting that traffic. If the receiving carrier is no longer disabled, it must accept the traffic according to the routing originally designated.

(c) *Notice by rerouting carrier.* A rerouting carrier must notify the Commission's Railroad Service Board, the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to car service and car hire agreements, and the American Short Line Railroad Association before the rerouting or diversion begins. The originating carrier must notify each shipper at the time each shipment is rerouted or diverted and furnish to each shipper the rerouting, *except when the disability requiring the rerouting occurs after the movement has begun.* When a rerouting carrier submits to the Commission a notice and explanation for an extension of the rerouting period, it must immediately also submit a copy of that notice and explanation to the AAR, the ASLRA and all shippers that have been affected or that the carrier believes will be affected or that request a copy.

(d) *Notice by AAR.* The AAR shall notify all carriers affected by rerouting or by an extension of a rerouting period, in a manner similar to that used for embargoes.

(e) *Applicable rates.* The rates applicable on shipments rerouted or diverted will be the rates applicable over the route originally designated at the time the shipments are tendered.

(f) *Divisions.* The carriers involved in the rerouting or diversion shall proceed even though no contracts, agreements, or arrangements exist between them at the time concerning the divisions of the rates applicable to the traffic. Divisions shall be, during the time the rerouting is in effect, those voluntarily agreed upon by the carriers.

(49 U.S.C. 10321, 11124, 5 U.S.C. 553)

[46 FR 21782, Apr. 14, 1981; 46 FR 26064, May 11, 1981]

PART 1035—BILLS OF LADING

Sec.
1035.1 Requirement for certain forms of bills of lading.
1035.2 Appendix D; form of domestic (straight) bill of lading prescribed.
1035.3 Appendix F; form of contract to be used for shipments of livestock and wild animals in lieu of uniform bill of lading prescribed.
1035.4 Uniform standard bill of lading and uniform order bill of lading.

AUTHORITY: 49 U.S.C. 10321 and 5 U.S.C. 553.

SOURCE: 32 FR 20024, Dec. 20, 1967, unless otherwise noted.

CROSS REFERENCES: For interstate transportation of livestock, see 9 CFR parts 71-77. For lading and unlading of vessels, see 19 CFR part 4.

§ 1035.1 Requirement for certain forms of bills of lading.

(a) All bills of lading referred to in this Part may be either paper documents or electronically generated and/or transmitted bills of lading.

(b) All common carriers, except express companies, engaged in the transportation of property by rail or by water subject to the Interstate Commerce Act served with notice of this proceeding and parties thereto, are hereby notified and required to cease and desist on or before August 8, 1919 from using their present bills of lading to the extent that the provisions and regulations contained therein are inconsistent with or different from the provisions and regulations contained in the forms of bills of lading designated as appendixes B and D.

(c) All common carriers subject to the act heretofore served with notice of this proceeding are hereby notified and required to adopt and put in use on or before August 8, 1919, upon notice to the Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act (49 U.S.C. 6), and thereafter to use and employ, uniformly when they issue bills of lading covering shipments, other than livestock, moving in interstate commerce, as required by and defined in section 20 of the act (49 U. S. C. 20), and such forms of bills of lading referred to as appendixes B and D.

NOTE: Derived from 52 I. C. C. 671, 64 I. C. C. 347, 357; 66 I. C. C. 63; 63 I. C. C. 637; 80 I. C. C. 305; 156 I. C. C. 188; 167 I. C. C. 214; 172 I. C. C. 362; 235 I. C. C. 63; 245 I. C. C. 527.

[32 FR 20024, Dec. 20, 1967, as amended at 53 FR 20853, June 7, 1988]

§ 1035.2 Appendix D; form of domestic (straight) bill of lading prescribed.

(See 49 CFR, 1938 ed., 31.2)

NOTE: Section 2(b) of the bill-of-lading contract terms and conditions is corrected to indicate a nine-month period within which to file claims with carriers on domestic as well as export traffic as a condition precedent to the recovery for loss, damage, injury, or delay to property while in the possession of carriers in accordance with the Act of April 23, 1930, 46 Stat. 251.

Section 9(d) of the bill-of-lading contract terms and conditions is corrected to indicate that the York-Antwerp Rules of 1924 governing the general average liability for loss of or damage to export traffic as approved in 156 I.C.C. 188 (1929) are substituted for the York-Antwerp Rules of 1890.

NOTE: Derived from 52 I.C.C. 671 (Appendix B); 64 I.C.C. 357, Appendix D; 66 I.C.C. 63, 167 I.C.C. 214; 172 I.C.C. 362; 245 I.C.C. 527, 6 FR 2912.

§ 1035.3 Appendix F; form of contract to be used for shipments of livestock and wild animals in lieu of uniform bill of lading prescribed.

(See 49 CFR, 1938 ed., 31.3)

NOTE: Derived from 64 I. C. C. 357; 66 I. C. C. 63; 245 I. C. C. 527, 6 FR 2912.

§ 1035.4 Uniform standard bill of lading and uniform order bill of lading.

Publication of the uniform standard bill of lading and uniform order bill of lading in the form presented on June 16, 1943, by the Association of American Railroads is authorized, subject to the conditions (a) that the wording on the face and back of the forms will conform to that now printed in the Consolidated Classification, the only changes being in the arrangement and spacing of the printed matter on the face of the forms, and (b) that the rail carriers shall allow shippers to use up their present supply of bills of lading before requiring such bills to conform to the rearrangement herein authorized.

PART 1037—RULES FOR THE HANDLING OF BULK GRAIN AND GRAIN PRODUCTS IN INTERSTATE COMMERCE, AND THE FILING, INVESTIGATION, AND DISPOSITION OF CLAIMS FOR LOSS AND DAMAGE INCIDENT THERETO, WHICH SUPERSEDE THE RULES PRESCRIBED IN EX PARTE NO. 263, LOSS AND DAMAGE CLAIMS, 340 I.C.C. 515 (37 FR 20943)

Sec.
1037.1 Weights and weighing.
1037.2 Cars.
1037.3 Claims.

AUTHORITY: 49 U.S.C. 12 and 15.

SOURCE: 40 FR 49342, Oct. 22, 1975, unless otherwise noted.

§ 1037.1 Weights and weighing.

(a) How determined—Accuracy of the weights used in determining the quantity of grain and grain products received for transportation by carriers and delivered by them to consignees being of primary and fundamental importance, the use of estimated weights based upon the cubical contents of the load and the test weight per bushel of the grain and grain products, or otherwise, will not be accepted. All shipments shall be carefully weighed by competent weighers upon scales that are known to be accurate within the limits of tolerance stated in scale specifications.

(b) Inspection of scales—Before weighing grain and grain products to and from cars, the scale and all other facilities to be used must be thoroughly inspected to ascertain whether they are in proper working condition, necessary adjustments or repairs, if any required, must be made, and an accurate and complete record thereof shall be entered at the time of inspection.

(c) Shipping weights—Where the shipper weighs the grain or grain products for shipment and a claim for loss and damage is subsequently filed on that shipment, the shipper shall furnish the carrier with whom the claim is filed certificates of weight showing car initials and number; the kind of grain or grain products; the total scale weight; the type and house number of the scale used; the number of drafts and weight of each draft; the date and time of weighing; whether the weight is official, board-of-trade, grain-exchange, State, or other supervised weight; and the number of grain doors used. This information should be furnished at the time the claim is filed.

(d) Destination weights—Where the consignee weighs a shipment of grain or grain products and a claim for loss and damage is subsequently filed on the shipment, the consignee shall furnish the carrier with whom the claim is filed certificates of weight showing the car initials and number; the kind of grain or grain products; the total scale weight; the type and house number of the scale used; the number of drafts and weight of each draft, and the date and time of weighing; and whether the weight is official, board-of-trade, grain-exchange, State, or other supervised weight. This information should be furnished at the time the claim is filed.

(e) A difference in weights at origin and destination, both of which are based on supervised scales, establishes *prima facie* that the loss occurred in transit and that the railroad is liable. When a difference in weights is based in part on an unsupervised weight, which nevertheless, was accepted by the railroad as the basis for assessing freight charges, such unsupervised weight in combination with a supervised weight establishes *prima facie* that the loss occurred in transit and the railroad is liable. When a difference in weights is based in part on an unsupervised weight, with the above exception, a *prima facie* case of railroad liability for loss in transit has *not* been established. Such difference in weights is a factor, however, to be considered in connection with other evidence that a clear-record car arrived at destination with seals intact and unbroken or that the shipper made a written complaint that any car placed for loading was defective in response to which the railroad filed a written report after investigation of the complaint. See paragraph (c) of § 1037.3.

§ 1037.2 Cars.

(a) A car is not in suitable condition for the transportation of bulk grain and grain products when it is defective and a car is defective, among other reasons, when it has deteriorated doorposts to which grain doors cannot be securely attached by the use of retention straps.

(b) The rules prescribed in this part 1037, apply on shipments of bulk grain and grain products transported solely in railroad-owned and railroad-leased cars.

(c) Cars with open-top linings tendered by the railroads may be used by the shipper without jeopardizing any subsequent claim which may be filed.

§ 1037.3 Claims.

(a) In computing the amount of the loss for which the carrier will pay there will be deducted from the gross amount of the ascertained actual loss one-fourth of 1 percent of the established loading weight to cover invisible loss and waste; provided, however, that where grain and grain products heat in transit and investigation shows that the invisible loss resulting therefrom exceeded one-fourth of 1 percent of such other amount as may hereafter be fixed in the manner above stated, and that the carrier is not otherwise liable for said loss, then the ascertained actual amount of the invisible loss due to heating of the grain and grain products will be deducted.

(b) Where investigation discloses a defect in equipment, seal or seal record, or a transfer in transit by the carrier of a carload of bulk grain or grain products upon which the unloading weight is less than the loading weight and the shipper furnishes duly attested certificates showing the correctness of the claimed weight, and investigation fails to show that the discrepancy is due to defective scales or other shipper facilities, or to inaccurate weighing or other error at point of origin or destination, or to fraud, then the resulting claim will be adjusted subject to the deductions authorized in the immediately preceding paragraph (a) of this § 1037.3; provided, however, that the clear record of either the carrier's or shippers' facilities shall not be interpreted as affecting or changing the burden of proof now lawfully resting upon either party. Therefore, movement in a clear-record car is not conclusive evidence of the fact that the car is not defective. It must be considered along with other evidence to determine liability. See paragraph (e) of § 1037.1

(c) In case of a disputed claim, the records of both the carrier and the claimant affecting the shipment involved shall be available to both parties. These records shall include a written complaint, if any, filed by the shipper with the railroad at the time the car was placed for loading that the car was defective, and the written report of an investigation of the complaint, filed by the railroad with the shipper, if made.

PART 1039—EXEMPTIONS

Sec.

1039.10 Exemption of agricultural commodities except grain, soybeans, and sunflower seeds.
1039.11 Miscellaneous commodities exemption.
1039.12 Long and short haul transportation exemption.
1039.13 Rail intermodal transportation exemption.
1039.14 Boxcar transportation exemption and rules.
1039.16 Exemption of new highway trailers or containers.
1039.17 Protective service contracts exemption.
1039.18 Allowance ("negative surcharge") tariff exemption.
1039.20 Storage leases.
1039.21 International joint through rates.

Authority: 49 U.S.C. 10321, 10505, 10708, 10762, and 11105; and 5 U.S.C. 553.

Source: 47 FR 50262, Nov. 5, 1982, unless otherwise noted.

§ 1039.10 Exemption of agricultural commodities except grain, soybeans, and sunflower seeds.

The rail transportation of the commodities listed below is exempt from the provisions of subtitle IV of title 49, except that carriers must continue to comply with Commission accounting and reporting requirements, including a brief statement in their annual reports of operations under this exemption, and must maintain copies of rates, charges, rules or regulations, for traffic moved under this exemption, at their principal office, subject to inspection, and send a letter of notification to the docket [Ex Parte No. 346 (Sub-No. 14)], within 30 days, of the fact that they are using the exemption. All tariffs pertaining to the transportation of these miscellaneous commodities will no longer apply except to the extent adopted by carrier quotations. The categories of commodities which are exempt under this decision, by Standard Transportation Commodity Code (STCC) number are:

01	Farm products, with the exception of grain (STCC No. 0113), soybeans (STCC No. 01144), and sunflower seeds (STCC No. 0114940).
09	Fresh fish and other marine products.
20-11	Fresh meat.
20-15	Fresh dressed poultry.
20-17	Processed poultry.
20-21	Creamery Butter.
20-23	Condensed, Evaporated or Dried Milk.
20-25	Cheese and Special Dairy Products.
20-26	Processed Whole Milk.
20-141	Hides ano Skins.
20-144	Animal refuse, tankage, or meat meal.
20-421-27	Citrus pomace.
20-712-12	Shelled walnuts.
20-914-25	Cottonseed hulls.
20-915	Cotton linters.
20-999-29	Butter and honey mixed.
20-999-41	Honey, comb, granulated or strained, or heat treated to retard granulation.
20-999-76	Freeze-dried poultry.
20-999-77	Freeze-dried meat.
20-999-78	Freeze-dried salad ingredients.
20-999-93	Fresh and salted meat and products mixed, not hung
20-999-94	Fresh and salted meat and products mixed, hung and not hung.
21-4	Stemmed or redried tobacco.
22-811-30	Cotton, carded, dyed or not dyed, but not spun, woven or knitted, but including cotton lap.
22-911-63	Matress felt, nec, cjors, not finished.
22-911-74	Felts, cotton, nec.
22-971-35	Wool, nec, scoured.
22-995-22	Flax fibre.
22-999-26	Cotton linters, bleached or dyed.
28-423-37	Beeswax.

and shall embrace all articles assigned additional digits. The STCC shall be those code numbers in effect as of January 1, 1979, as shown in Standard Transportation Commodity Code Tariff 1-G, ICC STCC 6001-C. Nothing in this exemption shall be construed to affect our jurisdiction under section 10505 or our ability to enforce this decision or any subsequent decision made under authority of this exemption section. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Commission.

[48 FR 9277, Mar. 4, 1983; 49 FR 22095, May 25, 1984, as amended at 49 FR 26745, June 29, 1984; 49 FR 27321, July 3, 1984]

§ 1039.11 Miscellaneous commodities exemptions.

(a) *Commodities exempted.* Except as indicated in paragraph (b) of this section, the rail transportation of the commodities listed below is exempt from the provisions of 49 U.S.C. subtitle IV. The Standard Transportation Commodity Code (STCC) numbers that identify the exempted commodities are those in effect on the effective date of the tariff cited, and shall embrace all commodities assigned additional digits.

STCC No.	STCC tariff	Commodity
20 12	6001-K, eff. 1-1-1983.	Frozen meat.
20 16	do	Frozen poultry.
20 24	do	Ice cream or related frozen desserts.
20 37	do	Frozen fruits, vegetables, or fruit juices.
20 38	do	Frozen specialties.
20 361	do	Frozen processed fish or seafood.
28 195 22-23.	6001-J, eff. 1-1-82.	Iron chloride liquid.
28 195 27-30, and 68-69.	do	Iron sulphate.
20	6001-Q, eff. 1-14-90.	Food and kindred products except 20 331 Lard. 20 139 Meat products, nec. 20 143 Grease or inedible tallow. 20 32 Canned specialties. 20 33 Canned fruits, jams, jellies, preserves or vegetables. 20 4 Grain mill products. 20 6 Sugar, beet or cane. 20 8 Beverages or flavoring extracts. 20 911 Cottonseed oil. 20 914 Cottonseed cake or meal or by products. 20 92 Soybean oils or by-products. 20 93 Nut or vegetable oils or by-products.
22	do	Textile mile products.
23	do	Apparel or other finished textile products.

STCC No.	STCC tariff	Commodity
24 9	do	Miscellaneous wood products except
		24 31 Treated wood products.
25	do	Furniture or Fixtures.
26	do	Pulp, paper or allied products except
		26 1 Pulp or pulp mill products.
		26 211 Newsprint.
		26 212 Ground wood paper.
		26 213 Printing paper, coated or uncoated, etc.
		26 214 Wrapping paper, wrappers or coarse paper.
		26 218 Sanitary tissue stock.
		26 471 Sanitary tissue or health products.
		26 6 Building paper or building board.
27	do	Printed matter.
30	do	Rubber or miscellaneous plastics products except
		30 111 Rubber pneumatic tires or parts.
31	do	Leather or leather products.
32	do	Clay, concrete, glass or stone products except
		32 411 Hydraulic cement, natural, portland or masonry.
		32 741 Lime or lime plaster.
		32 95 Nonmetallic earths or minerals, ground or treated.
33 123	do	Iron or steel sheet or strip.
33 13	do	Electrometallurgical products.
33 15	do	Steel wire, nails, or spikes.
33 219	do	Iron or steel castings, nec.
33 5	do	Nonferrous metal basic shapes.
33 6	do	Nonferrous metal or base alloy castings.
33 9	do	Miscellaneous primary metal products.
34	do	Fabricated metal products except
		34 6 Metal stampings.
		34 919 40 Radioactive metal shipping containers.
35	do	Machinery, except electrical except
		35 11 Steam engines, turbines, turbine generator sets or parts.
		35 31 Construction machinery.
		35 85 Refrigerators, Refrigeration machinery or complete air conditioners.
36	do	Electrical machinery, equipment or supplies except
		36 12 Power distribution or specialty transformers.
		36 21 Motors or generators.
38	do	Instruments, photographic goods, optical goods, watches or clocks.
39	do	Miscellaneous products of manufacturing.

Also excepted from this exemption are those recyclable products specifically identified by the Commission at 356 I.C.C. 445–447, those commodities previously exempt, and any transportation service regarding which the Commission has made a finding of market dominance. However, this exemption shall not be construed as affecting in any way the existing regulations, agreements, prescriptions, conditions, allowances or levels of compensation regarding the use of equipment, whether shipper or railroad owned or leased, including car hire, per diem and mileage allowances, and also including exemption from the anti-trust laws necessary to negotiate car service regulations or mandatory interchange of equipment or to maintain and execute such agreements. Nor shall this exemption be construed to affect existing Class III railroad "protections" in the case of boxcars.

(b) *Conditions.* Carriers must continue to comply with Commission accounting and reporting requirements. All railroad tariffs pertaining to the transportation of these miscellaneous commodities will no longer apply. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Commission.

[48 FR 24901, June 3, 1983, as amended at 48 FR 33306, July 21, 1983; 48 FR 55744, Dec. 15, 1983; 54 FR 51402, Dec. 15, 1989]

§ 1039.12 Long and short haul transportation exemption.

(a) All rates and charges for rail transportation are exempt from the provisions of 49 U.S.C. 10726 to the extent that:

(1) Commission approval or consideration before the effective date of these rates and charges is not required; and

(2) Section 10707 will not apply to rates to the extent that they are challenged on the basis of alleged violations of section 10726.

(b) This exemption does not extend to review by the Commission upon the filing of a formal complaint alleging a violation of section 10726. Commission review will, however, be subject to the following conditions:

(1) A showing that a rate violates section 10726 will not create a presumption that the higher rate is unreasonably high, and

(2) A finding by the Commission that a rate or charge violates the provisions of section 10726 will not, absent a specific showing of damages, afford a basis for an award of reparations.

[48 FR 9649, Mar. 8, 1983]

§ 1039.13 Rail intermodal transportation exemption.

See Part 1090.

[52 FR 23660, June 24, 1987]

§ 1039.14 Boxcar transportation exemption and rules.

(a) The Rail transportation of all commodities in boxcars is exempt from the provisions of 49 U.S.C. subtitle IV except as otherwise provided in this section.

(b) The Commission retains jurisdiction in the following areas:

(1) Car hire and car service.

(2) Mandatory interchange of equipment.

(3) Reciprocal switching or joint use of terminal facilities.

(4) Car supply.

(5) Rates for the transportation of recyclable or recycled materials other than iron and steel.

(6) Freight car pooling agreements.

(7) Freight rates applicable to boxcar traffic originating or terminating at an industry facility served physically by a Class III rail carrier, to the extent provided in paragraphs (c)(4) and (c)(5) of this section.

(c)(1) Except as provided in paragraph (c)(2) of this section, carriers are authorized to take the following actions with respect to boxcar equipment use:

(i) Assess charges for empty movement of cars where movements are made at the request of the car owner, the Association of American Railroads, or the Commission. The empty mileage charge is subject to a maximum of 35 cents per mile, as adjusted for inflation or deflation using the rail cost adjustment factors published periodically by the Commission in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*. In applying those factors, the figure of 35 cents will be treated as having been in effect on October 1, 1982.

(ii) Store empty cars and reclaim car hire payments beginning at the expiration of a 72-hour grace period after the car is made empty.

(iii) Negotiate bilateral agreements governing car hire rates, empty movements, and storage.

(2) The authorization in paragraphs (c)(1) (i) and (ii) of this section will not apply to excluded carriers, as defined in paragraph (c)(2)(i) of this section, nor will it apply to any boxcar which, on December 30, 1983, was owned or leased by a carrier which then would have qualified as an excluded carrier and which bears the reporting marks of an excluded carrier.

(i) An "excluded carrier" is a Class III carrier or a Class II carrier not affiliated with one or more Class I carriers. To be affiliated, the Class II carrier must be more than 50 percent owned by one or more Class I carriers.

(ii) The boxcar exclusion of paragraph (c)(2) of this section will apply:

(A) To an excluded boxcar whenever it is owned or leased by any Class III carrier and bears a Class III carrier's reporting marks; and

(B) To an excluded boxcar owned or leased by an excluded Class II carrier during a 4-year period beginning with the effective date of this rule, so long as such boxcar has not been otherwise owned or leased by another carrier during such 4-year period.

(iii) The exclusion will not apply during any period in which an excluded boxcar is leased or assigned to a Class I or affiliated Class II carrier. If an excluded Class II carrier becomes a Class III carrier within said 4-year period, that carrier will thereafter, for purposes of this rule, be treated as if it had been a Class III carrier on December 30, 1983.

(iv) Nothing in paragraph (c)(2) of this section will affect the right of any carrier to negotiate bilateral agreements governing car hire rates and rules.

(3) The hourly and mileage car hire rates in effect on January 1, 1985, as published in AAR Traffic Circular No. OT-10, for any boxcar excluded under paragraph (c)(2) of this section, will remain in effect without regard to the aging of such car subsequent to January 1, 1986, and any modification to the existing car hire formula will not apply to such cars. Any improvements subsequent to January 1, 1985, to the excluded boxcars capitalized under OT-37 criteria or under rebuilt criteria will be subject to the same formula applicable to OT-37 or rebuilt cars under Ex Parte No. 334 or any other railroad car hire proceeding, including any efficiency ratio, if adopted.

(4) No freight rate made effective after April 1, 1985, that applies to traffic moving by boxcar and originating or terminating at an industry facility served physically by a Class III rail carrier may discriminate while these rules are in effect on the basis of:

(i) The ownership of the boxcar used or the reporting marks any such boxcar bears;

(ii) The car hire rate applicable to the boxcar used; or

(iii) Any car hire discounts, in the form of reclaims or otherwise, available to any carriers with respect to the boxcar used.

Except as prohibited above, carriers may use car ownership or car marks for identification purposes when establishing rates.

(5) The provisions of 49 U.S.C. 10705 and 10705a applicable to joint rates and through routes will be effective as to rates and routes applicable to boxcar traffic originating or terminating at an industry facility served physically by a Class III rail carrier.

(6) The following carriers are not regarded as Class III or unaffiliated Class II carriers for the purpose of this section:

Central New York Railroad Corporation
Cooperstown and Charlotte Valley Railway Corporation
Fonda, Johnstown & Gloversville Railroad Corporation
Lackawaxen and Stourbridge Railroad Corporation
New York, Susquehanna & Western Railway Corporation
Rahway Valley Railroad Company
Staten Island Railway Corporation.

(d) Carriers must continue to comply with Commission accounting and reporting requirements. Railroad tariffs pertaining to the exempted transportation of commodities in boxcars will no longer apply. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Commission.

[48 FR 20415, May 6, 1983, as amended at 50 FR 20419, May 16, 1985; 51 FR 32656, Sept. 15, 1986; 51 FR 32922, Sept. 17, 1986; 52 FR 37971, Oct. 13, 1987]

§ 1039.16 Exemption of new highway trailers or containers.

The rail transportation of new highway trailers or containers (which is not otherwise exempt) is exempt from the provisions of 49 U.S.C. Subtitle IV, except that carriers must continue to comply with the Commission's accounting and reporting requirements. This exemption will remain in effect unless modified or revoked by subsequent order of this Commission.

[52 FR 17404, May 8, 1987]

§ 1039.17 Protective service contracts exemption.

Contracts for protective services against heat or cold, provided to or on behalf of rail carriers and express companies, are exempt from the requirements of 49 U.S.C. 11105. Nothing in this exemption shall be construed to affect our jurisdiction under section 10505 or our ability to enforce this decision or any subsequent decision made under authority of this exemption section. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Commission.

[49 FR 19025, May 4, 1984]

§ 1039.18 Allowance ("negative surcharge") tariff exemption.

Rail allowance ("negative surcharge") tariffs reducing the total charges applicable to a movement subject to a joint rate in which the carrier publishing the tariff participates, when the reduction is borne solely by that carrier, are exempt from the provisions of 49 U.S.C. 10762(b)(2) that require concurrence or acceptance by other parties to the joint rate.

[50 FR 33344, Aug. 19, 1985]

§ 1039.20 Storage leases.

Storage leases for all equipment for all carrriers are exempt from the provisions of 49 U.S.C. subtitle IV except for 49 U.S.C. 11123. Nothing in this exemption should be construed to affect our jurisdiction under section 10505 or our ability to enforce this decision or any subsequent decision made under authority of this exemption section. This exemption shall remain in effect, unless modified or revoked by a subsequent decision of this Commission.

[51 FR 46675, Dec. 24, 1986]

§ 1039.21 International joint through rates.

Rail carriers are exempt from the provisions of § 1312.37 that require the filing of tariffs containing international joint through rates. Rail carriers must continue to comply with Commission accounting and reporting requirements. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Commission.

[51 FR 27046, July 29, 1986]

PARTS 1040-1069—MOTOR CARRIERS—BROKERS—GENERAL

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

Sec.

1043.1 Surety bond, certificate of insurance, or other securities.
1043.2 Security for the protection of the public: Minimum limits.
1043.3 Combination vehicles.
1043.4 Property broker surety bond or trust fund.
1043.5 Qualifications as a self-insurer and other securities or agreements.
1043.6 Bonds and certificates of insurance.
1043.7 Forms and procedures.
1043.8 Insurance and surety companies.
1043.9 Refusal to accept, or revocation by the Commission of surety bonds, etc.
1043.10 Fiduciaries.
1043.11 Operations in foreign commerce.

AUTHORITY 49 U.S.C. 10101, 10321, 11701, 10927; 5 U.S.C. 553.

SOURCE: 32 FR 20032, Dec. 20, 1967, unless otherwise noted.

CROSS REFERENCE: Prescribed forms relating to this part are listed in Part 1003 of this chapter.

§ 1043.1 Surety bond, certificate of insurance, or other securities.

(a) *Public liability.* (1) No common or contract carrier subject to subchapter II, chapter 105, subtitle IV of title 49 of the U.S. Code shall engage in interstate or foreign commerce, and no certificate or permit shall be issued to such a carrier or remain in force unless and until there shall have been filed with and accepted by the Commission surety bonds, certificates of insurance, proof of qualifications as self-insurer, or other securities or agreements, in the amounts prescribed in § 1043.2, conditioned to pay any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance or use of motor vehicles in transportation subject to subchapter II, chapter 105, subtitle IV of title 49 of the U.S. Code, or for loss of or damage to property of others, or, in the case of motor carriers of property operating freight vehicles described in § 1043.2(b)(2) of this part, for environmental restoration.

(2) Motor Carriers of property which are subject to the conditions set forth in paragraph (a)(1) of this section and transport the commodities described in § 1043.2(b)(2), are required to obtain security in the minimum limits prescribed in § 1043.2(b)(2).

(b) *Common carriers-cargo insurance; exempt commodities.* No common carrier by motor vehicle subject to subchapter II, chapter 105, subtitle IV of title 49 of the U.S. Code shall engage in interstate or foreign commerce, nor shall any certificate be issued to such a carrier or remain in force unless and until there shall have been filed with and accepted by the Commission, a surety bond, certificate of insurance, proof of qualifications as a self-insurer, or other securities or agreements in the amounts prescribed in § 1043.2, conditioned upon such carrier making compensation to shippers or consignees for all property belonging to shippers or consignees and coming into the possession of such carrier in connection with its transportation service: *Provided*, That the requirements of this paragraph shall not apply in connection with the transportation of the following commodities:

Agricultural ammonium nitrate.
Agricultural nitrate of soda.
Anhydrous ammonia—used as a fertilizer only.
Ashes, wood or coal.
Bituminous concrete (also known as blacktop or amosite), including mixtures of asphalt paving.
Cement, dry, in containers or in bulk.
Cement, building blocks.
Charcoal.
Chemical fertilizer.
Cinder blocks.
Cinders, coal.
Coal.
Coke.
Commercial fertilizer.
Concrete materials and added mixtures.
Corn cobs.
Cottonseed hulls.
Crushed stone.
Drilling salt.
Dry fertilizer.
Fish scrap.
Fly ash.
Forest products; viz: Logs, billets, or bolts, native woods, Canadian wood or Mexican pine; pulpwood, fuel wood, wood kindling; and wood sawdust or shavings (shingle tow) other than jewelers' or paraffined.
Foundry and factory sweepings.
Garbage.
Gravel, other than bird gravel.
Hardwood and parquet flooring.
Haydite.
Highway construction materials, when transported in dump trucks and unloaded at destination by dumping.
Ice.
Iron ore.
Lime and limestone.
Liquid fertilizer solutions, in bulk, in tank vehicles.
Lumber.
Manure.
Meat scraps.
Mud drilling salt.
Ores, in bulk, including ore concentrates.
Paving materials, unless contain oil hauled in tank vehicles.
Peat moss.
Peeler cores.
Plywood.
Poles and piling, other than totem poles.
Potash, used as commercial fertilizer.
Pumice stone, in bulk in dump vehicles.
Salt, in bulk or in bags.
Sand, other than asbestos, bird, iron, monazite, processed, or tobacco sand.
Sawdust.
Scoria stone.
Scrap iron.
Scrap steel.
Shells, clam, mussel, or oyster.
Slag, other than slag with commercial value for the further extraction of metals.
Slag, derived aggregates—cinders.
Slate, crushed or scrap.
Slurry, as waste material.
Soil, earth or marl, other than infusorial, diatomaceous, tripoli, or inoculated soil or earth.
Stone, unglazed and unmanufactured, including ground agricultural limestone.
Sugar beet pulp.
Sulphate of ammonia, bulk, used as fertilizer.
Surfactants.
Trap rock.
Treated poles.
Veneer.
Volcanic scoria.
Waste, hazardous and nonhazardous, transported solely for purposes of disposal.
Water, other than mineral or prepared—water.
Wood chips, not processed.
Wooden pallets, unassembled.
Wreck or disabled motor vehicles.
Other materials or commodities of low value, upon specific application to and approval by the Commission.

(c) *Continuing compliance required*. Such security as is accepted by the Commission in accordance with the requirements of section 10927, subchapter II, chapter 109, subtitle IV of title 49 of the U.S. Code, shall remain in effect at all times.

[48 FR 51780, Nov. 14, 1983]

§ 1043.2 Security for the protection of the public: Minimum limits.

(a) *Definitions*. (1) "Primary security" means public liability coverage provided by the insurance or surety company responsible for the first dollar of coverage.

(2) "Excess security" means public liability coverage above the primary security, or above any additional underlying security, up to and including the required minimum limits set forth in paragraph (b)(2) of this section.

(b)(1) Motor carriers subject to § 1043.1(a)(1) are required to have security for the required minimum limits as follows:

(i) *Small freight vehicles:*

Kind of equipment	Transportation provided	Minimum limits
Fleet including only vehicles under 10,000 pounds GVWR.	Commodities not subject to § 1043.2(b)(2)(d).	$300,000

(ii) *Passenger carriers*

Kind of Equipment

Vehic'e seating capacity	Effective dates	
	Nov. 19, 1983	Nov. 19, 1985
(1) Any vehicle with a seating capacity of 16 passengers or more	$2,500,000	$5,000,000
(2) Any vehicle with a seating capacity of 15 passengers or less	750,000	1,500,000

(2) Motor carriers subject to § 1043.1(a)(2) are required to have security for the required minimum limits as follows:

Kind of equipment	Commodity transported	July 1, 1983*	July 1, 1984*
(a) Freight Vehicles of 10,000 Pounds or More GVWR.	Property (non-hazardous)	$500,000	$750,000
(b) Freight Vehicles of 10,000 Pounds or More GVWR.	Hazardous substances, as defined in § 171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons, or in bulk Class A or B explosives, poison gas (Poison A) liquefied compressed gas or compressed gas, or highway route controlled quantity radioactive materials as defined in § 173.455.	1,000,000	5,000,000
(c) Freight Vehicles of 10,000 Pounds or More GVWR.	Oil listed in § 172.101; hazardous waste, hazardous materials and hazardous substances defined in § 171.8 and listed in § 172.101, but not mentioned in (b) above or (d) below.	500,000	1,000,000
(d) Freight Vehicles Under 10,000 Pounds GVWR.	Any quantity of Class A or B explosives; any quantity of poison gas (Poison A); or highway route controlled quantity radioactive materials as defined in § 173.455.	1,000,000	5,000,000

*NOTE: The effective date of the current required minimum limit in § 1043.2(b)(2)(d) was January 6, 1983, in accordance with the requirements of Pub. L. 97-424, 96 Stat. 2097.

(3) Motor carriers subject to the minimum limits governed by this section, which are also subject to Department of Transportation limits requirements, are at no time required to have security for more than the required minimum limits established by the Secretary of Transportation in the applicable provisions of 49 CFR Part 387—Minimum Levels of Financial Responsibility for Motor Carriers.

(4) *Foreign motor carriers and foreign motor private carriers.* Foreign motor carriers and foreign motor private carriers (Mexican), subject to the requirements of 49 U.S.C. 10530 and 49 CFR part 1171 regarding obtaining certificates of registration from the Commission, must meet our minimum financial responsibility requirements by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurance or surety companies, that meet the requirements of 49 CFR 1043.8. These carriers must have available for inspection, in each vehicle operating in the United States, copies of the following documents:

(1) The certificate of registration;

(2) The required insurance endorsement (Form MCS-90); and

(3) An insurance identification card, binder, or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the insurance coverage.

Notwithstanding the provisions of § 1043.1(a)(1), the filing of evidence of insurance is not required as a condition to the issuance of a certificate of registration. Further, the reference to continuous coverage at § 1043.7(a)(6) and the reference to cancellation notice at § 1043.7(d) are not applicable to these carriers.

(c) *Motor common carriers: Cargo liability.* Security required to compensate shippers or consignees for loss or damage to property belonging to shippers or consignees and coming into the possession of motor carriers in connection with their transportation service, (1) for loss of or damage to property carried on any one motor vehicle—$5,000, (2) for less of or damage to or aggregate of losses or damages of or to property occurring at any one time and place—$10,000.

[47 FR 55944, Dec. 14, 1982, as amended at 48 FR 43333, Sept. 23, 1983; 48 FR 45775, Oct. 7, 1983; 48 FR 51780, Nov. 14, 1983; 49 FR 1991, Jan. 17, 1984; 49 FR 27767, July 6, 1984; 50 FR 40030, Oct. 1, 1985; 53 FR 36984, Sept. 23, 1988; 54 FR 52034, Dec. 20, 1989]

§ 1043.3 Combination vehicles.

The following combinations will be regarded as one motor vehicle for purposes of this part, (a) a tractor and trailer or semitrailer when the tractor is engaged solely in drawing the trailer or semitrailer, and (b) a truck and trailer when both together bear a single load.

§ 1043.4 Property broker surety bond or trust fund.

(a) *Security.* A property broker must have a surety bond or trust fund in effect for $10,000. The Commission will not issue a property broker license until a surety bond or trust fund for the full limits of liability prescribed herein is in effect. The broker license shall remain valid or effective only as long as a surety bond or trust fund remains in effect and shall ensure the financial responsibility of the broker.

(b) *Evidence of Security.* Evidence of a surety bond must be filed using the Commission's prescribed Form BMC 84. Evidence of a trust fund with a financial institution must be filed using the Commission's prescribed Form BMC 85. The surety bond or the trust fund shall ensure the financial responsibility of the broker by providing for payments to shippers or motor carriers if the broker fails to carry out its contracts, agreements, or arrangements for the supplying of transportation by authorized motor carriers.

(c) *Financial Institution*—when used in this section and in forms prescribed under this section, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, shall mean—Each agent, agency, branch or office within the United States of any person, as defined by the Interstate Commerce Act, doing business in one or more of the capacities listed below:

(1) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));

(2) A commercial bank or trust company;

(3) An agency or branch of a foreign bank in the United States;

(4) An insured institution (as defined in section 401(a) of the National Housing Act (12 U.S.C. 1724(a));

(5) A thrift institution (savings bank, building and loan association, credit union, industrial bank or other);

(6) An insurance company;

(7) A loan or finance company; or

(8) A person subject to supervision by any state or federal bank supervisory authority.

(d) *Forms and Procedures*—(1) *Forms for broker surety bonds and trust agreements.* Form BMC-84 broker surety bond will be filed with the Commission for the full security limits under subsection (a); or Form BMC-85 broker trust fund agreement will be filed with the Commission for the full security limits under paragraph (a) of this section.

(2) *Broker surety bonds and trust fund agreements in effect continuously.* Surety bonds and trust fund agreements shall specify that coverage thereunder will remain in effect continuously until terminated as herein provided.

(i) *Cancellation notice.* The surety bond and the trust fund agreement may be cancelled as only upon 30 days' written notice to the Commission, on prescribed Form BMC 36, by the principal or surety for the surety bond, and on prescribed Form BMC 85, by the trustor/broker or trustee for the trust fund agreement. The notice period commences upon the actual receipt of the notice at the Commission's Washington, DC office.

(ii) *Termination by replacement.* Broker surety bonds or trust fund agreements which have been accepted by the Commission under these rules may be replaced by other surety bonds or trust fund agreements, and the liability of the retiring surety or trustee under such surety bond or trust fund agreements shall be considered as having terminated as of the effective date of the replacement surety bond or trust fund agreement. However, such termination shall not affect the liability of the surety or the trustee hereunder for the payment of any damages arising as the result of contracts, agreements or arrangements made by the broker for the supplying of transportation prior to the date such termination becomes effective.

(3) *Filing and copies.* Broker surety bonds and trust fund agreements must be filed with the Commission in duplicate.

[53 FR 10396, Mar. 31, 1988]

§ 1043.5 Qualifications as a self-insurer and other securities or agreements.

(a) *As a self-insurer.* The Commission will consider and will approve, subject to appropriate and reasonable conditions, the application of a motor carrier to qualify as a self-insurer, if the carrier furnishes a true and accurate statement of its financial condition and other evidence that establishes to the satisfaction of the Commission the ability of the motor carrier to satisfy its obligation for bodily injury liability, property damage liability, or cargo liability. Application Guidelines: In addition to filing Form B.M.C. 40, applicants for authority to self-insure against bodily injury and property damage claims should submit evidence that will allow the Commission to determine:

(1) The adequacy of the tangible net worth of the motor carrier in relation to the size of operations and the extent of its request for self-insurance authority. Applicant should demonstrate that it will maintain a net worth that will ensure that it will be able to meet its statutory obligations to the public to indemnify all claimants in the event of loss.

(2) The existence of a sound self-insurance program. Applicant should demonstrate that it has established, and will maintain, an insurance program that will protect the public against all claims to the same extent as the minimum security limits applicable to applicant under § 1043.2 of this part. Such a program may include, but not be limited to, one or more of the following: Irrevocable letters of credit; irrevocable trust funds; reserves; sinking funds; third-party financial guarantees, parent company or affiliate sureties; excess insurance coverage; or other similar arrangements.

(3) The existence of an adequate safety program. Applicant must submit evidence of a current "satisfactory" safety rating by the United States Department of Transportation. Non-rated carriers need only certify that they have not been rated. Applications by carriers with a less than satisfactory rating will be summarily denied. Any self-insurance authority granted by the Commission will automatically expire 30 days after a carrier receives a less than satisfactory rating from DOT.

(4) Additional information. Applicant must submit such additional information to support its application as the Commission may require.

(b) *Other securities or agreements.* The Commission also will consider applications for approval of other securities or agreements and will approve any such application if satisfied that the security or agreement offered will afford the security for protection of the public contemplated by 49 U.S.C. 10927.

[48 FR 51780, Nov. 14, 1983 and 51 FR 15008, Apr. 22, 1986, as amended at 52 FR 3815, Feb. 6, 1987]

§ 1043.6 Bonds and certificates of insurance.

(a) *Public liability.* Each Form BMC 82 surety bond filed with the Commission must be for the full limits of liability required under § 1043.2(b)(1). Form MCS-82 surety bonds and other forms of similar import prescribed by the Department of Transportation may be aggregated to comply with the minimum security limits required under § 1043.2(b)(1) or § 1043.2(b)(2). Each Form BMC 91 certificate of insurance filed with the Commission will always represent the full security minimum limits required for the particular carrier, while it remains in force, under § 1043.2(b)(1) or § 1043.2(b)(2), whichever is applicable. Any previously executed Form BMC 91 filed before the current revision which is left on file with the Commission after the effective date of this regulation, and not canceled within 30 days of that date will be deemed to certify the same coverage limits as would the filing of a revised Form BMC 91. Each Form BMC 91X certificate of insurance filed with the Commission will represent the full security limits under § 1043.2(b)(1) or § 1043.2(b)(2) or the specific security limits of coverage as indicated on the face of the form. If the filing reflects aggregation, the certificate must show clearly whether the insurance is primary or, if excess coverage, the amount of underlying coverage as well as amount of the maximum limits of coverage.* Each Form BMC 91MX certificate of insurance filed with the Commission will represent the security limits of coverage as indicated on the face of the form. The Form BMC 91MX must show clearly whether the insurance is primary or, if excess coverage, the amount of underlying coverage as well as amount of the maximum limits of coverage.

(b) *Cargo Liability.* Each form B.M.C. 83 surety bond filed with the Commission must be for the full limits of liability required under § 1043.2(c). Each Form B.M.C. 34 certificate of insurance filed with the Commission will represent the full security limits under § 1043.2(c) or the specific security limits of coverage as indicated on the face of the form. If the filing reflects aggregation, the certificate must show clearly whether the insurance is primary or, if excess coverage, the amount of underlying coverage as well as amount of the maximum limits of coverage.

(c) Each policy of insurance in connection with the certificate of insurance which is filed with the Commission, shall be amended by attachment of the appropriate endorsement prescribed by the Commission or the Department of Transportation and the certificate of insurance filed must accurately reflect that endorsement.

[47 FR 55944, Dec. 14, 1982, as amended at 48 FR 43332, Sept. 23, 1983; 48 FR 51781, Nov. 14, 1983; 50 FR 40030, Oct. 1, 1985]

§ 1043.7 Forms and procedures.

(a) *Forms for endorsements, certificates of insurance and others.* (1) *In form prescribed.* Endorsements for policies of insurance and surety bonds, certificates of insurance, applications to qualify as a self-insurer, or for approval of other securities or agreements, and notices of cancellation must be in the form prescribed and approved by the Commission.

(2) *Aggregation of Insurance.*** When insurance is provided by more than one insurer in order to aggregate security limits for carriers operating only freight vehicles under 10,000 pounds Gross Vehicle Weight Rating, as defined in § 1043.2(b)(1), a separate *Form BMC 90,* with the specific amounts of underlying and limits of coverage shown thereon or appended thereto, and *Form BMC 91X* certificate is required of each insurer.

For aggregation of insurance for all other carriers to cover security limits under § 1043.2 (b)(1) or (b)(2), a separate Department of Transportation prescribed form endorsement and *Form BMC 91X* certificate is required of each insurer. When insurance is provided by more than one insurer to aggregate coverage for security limits under § 1043.2(c) a separate Form BMC 32 endorsement and Form BMC 34 certificate of insurance is required for each insurer.

For aggregation of insurance for foreign motor private carriers of nonhazardous commodities to cover security limits under § 1043.2(b)(4), a separate

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*NOTE: Aggregation to meet the requirement of § 1043.2(b)(1) will not be allowed until the completion of our rulemaking in Ex Parte No. MC-5 (Sub-No. 2), *Motor Carrier and Freight Forwarder Insurance Procedures and Minimum Amounts of Liability.*

**NOTE: See NOTE for Rule 1043.6. Also, it should be noted that DOT is considering prescribing adaptations of the Form MCS 90 endorsement and the Form MCS 82 surety bond for use by passenger carriers and Rules §§ 1043.6 and 1043.7 have been written sufficiently broad to provide for this contingency when new forms are prescribed by that Agency.

Form BMC 90 with the specific amounts of underlying and limits of coverage shown thereon or appended thereto, or Department of Transportation prescribed form endorsement, and Form BMC 91MX certificate is required for each insurer.

(3) *Use of Certificates and Endorsements in BMC Series. Form BMC 91* certificates of insurance will be filed with the Commission for the full security limits under § 1043.2 (b)(1) or (b)(2).

Form BMC 91X certificate of insurance will be filed to represent full coverage or any level of aggregation for the security limits under § 1043.2 (b)(1) or (b)(2).

Form BMC 90 endorsement will be used with each filing of *Form BMC 91* or *Form 91X* certificate with the Commission which certifies to coverage not governed by the requirements of the Department of Transportation. *Form BMC 32* endorsement and *Form BMC 34* certificate of insurance and *Form BMC 83* surety bonds are used for the limits of cargo liability under § 1043.2(c).

Form BMC 91MX certificate of insurance will be filed to represent any level of aggregation for the security limits under § 1043.2(b)(4).

(4) *Use of Endorsements in MCS Series.* When Security limits certified under § 1043.2 (b)(1) or (b)(2) involves coverage also required by the Department of Transportation a *Form MCS endorsement* prescribed by the Department of Transportation such as, and including, the *Form MCS 90* endorsement is required.

(5) *Surety bonds.* When surety bonds are used rather than certificates of insurance, *Form BMC 82* is required for the security limits under § 1043.2(b)(1) not subject to regulation by the Department of Transportation, and *Form MCS 82*, or any form of similar import prescribed by the Department of Transportation, is used for the security limits subject also to minimum coverage requirements of the Department of Transportation.

(6) *Surety bonds and certificates in effect continuously.* Surety bonds and certificates of insurance shall specify that coverage thereunder will remain in effect continuously until terminated as herein provided, except: (1) When filed expressly to fill prior gaps or lapses in coverage or to cover grants of emergency temporary authority of unusually short duration and the filing clearly so indicates, or (2) in special or unusual circumstances, when special permission is obtained for filing certificates of insurance or surety bonds on terms meeting other particular needs of the situation.

(b) *Filing and copies.* Certificates of insurance, surety bonds, and notices of cancellation must be filed with the Commission in triplicate.

(c) *Name of insured.* Certificates of insurance and surety bonds shall be issued in the full and correct name of the individual, partnership, corporation or other person to whom the certificate, permit, or license is, or is to be, issued. In the case of a partnership, all partners shall be named.

(d) *Cancellation notice.* Except as provided in paragraph (e) of this section, surety bonds, certificates of insurance and other securities or agreements shall not be cancelled or withdrawn until 30 days after written notice has been submitted to the Commission at its offices in Washington, DC, on the prescribed form (Form BMC-35, Notice of Cancellation Motor Carrier Policies of Insurance under 49 U.S.C. 10927, and BMC-36, Notice of Cancellation Motor Carrier and Broker Surety Bonds, as appropriate) by the insurance company, surety or sureties, motor carrier, broker or other party thereto, as the case may be, which period of thirty (30) days shall commence to run from the date such notice on the prescribed form is actually received by the Commission.

(e) *Termination by replacement.* Certificates of insurance or surety bonds which have been accepted by the Commission under these rules may be replaced by other certificates of insurance, surety bonds or other security, and the liability of the retiring insurer or surety under such certificates of insurance or surety bonds shall be considered as having terminated as of the effective date of the replacement certificate of insurance, surety bond or other security, provided the said replacement certificate, bond or other security is acceptable to the Commission under the rules and regulations in this part.

Cross Reference: For list of forms prescribed, see § 1003.1(b) of this chapter.

[47 FR 55944, Dec. 14, 1982, as amended at 48 FR 43334, Sept. 23, 1983; 48 FR 51781, Nov. 14, 1983; 50 FR 40030, Oct. 1, 1985; 51 FR 34623, Sept. 30, 1986]

§ 1043.8 Insurance and surety companies.

A certificate of insurance or surety bond will not be accepted by the Commission unless issued by an insurance or surety company which (a) is legally authorized to issue such bonds or underlying insurance policies in each state in which the motor carrier is authorized by the Commission to operate, or (b) is legally authorized to issue such policies or bonds in the state in which the carrier has its principal place of business or domicile, and will designate in writing upon request by the Commission, a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any state in which the carrier operates, or (c) is legally authorized to issue such policies or bonds in any state of the United States and is eligible as an excess or surplus lines insurer in any state in which business is written, and will designate in writing upon request by the Commission, a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any state in which the carrier operates.

[48 FR 51781, Nov. 14, 1983]

§ 1043.9 Refusal to accept, or revocation by the Commission of surety bonds, etc.

The Commission may, at any time, refuse to accept or may revoke its acceptance of any surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements if, in its judgment such security does not comply with these sections or for any reason fails to provide satisfactory or adequate protection for the public. Revocation of acceptance of any certificate of insurance, surety bond or other security shall not relieve the motor carrier from compliance with § 1043.1(d).

[47 FR 55945, Dec. 14, 1982]

§ 1043.10 Fiduciaries.

(a) *Definitions.* The terms "insured" and "principal" as used in a certificate of insurance, surety bond, and notice of cancellation, filed by or for a motor carrier, include the motor carrier and its fiduciary as of the moment of succession. The term "fiduciary" means any person authorized by law to collect and preserve property of incapacitated, financially disabled, bankrupt, or deceased holders of operating rights, and assignees of such holders.

(b) *Insurance coverage in behalf of fiduciaries to apply concurrently.* The coverage furnished under the provisions of this section on behalf of fiduciaries shall not apply subsequent to the effective date of other insurance, or other security, filed with and approved by the Commission in behalf of such fiduciaries. After the coverage provided in this section shall have been in effect thirty (30) days, it may be cancelled or withdrawn within the succeeding period of thirty (30) days by the insurer, the insured, the surety, or the principal upon ten (10) days' notice in writing to the Commission at its office in Washington, DC, which period of ten (10) days shall commence to run from the date such notice is actually received by the Commission. After such coverage has been in effect for a total of sixty (60) days, it may be cancelled or withdrawn only in accordance with § 1043.7.

[32 FR 20032, Dec. 20, 1967, as amended at 47 FR 49596, Nov. 1, 1982; 47 FR 55945, Dec. 14, 1982; 55 FR 11197, Mar. 27, 1990]

§ 1043.11 Operations in foreign commerce.

No motor carrier may operate in the United States in the course of transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country unless and until there shall have been filed with and accepted by the Commission a certificate of insurance, surety bond, proof of qualifications as a self-insurer, or other securities or agreements in the amount prescribed in § 1043.2(b), conditioned to pay any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles in transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country, insofar as such transportation takes place in the United States, or for loss of or damage to property of others. The security for the protection of the public required by this section shall be maintained in effect at all times and shall be subject to the provisions of §§ 1043.5, 1043.6, 1043.7, 1043.8, 1043.9 and 1043.10. The requirements of § 1043.8(a) shall be satisfied if the insurance or surety company, in addition to having been approved by this Commission, is legally authorized to issue policies or surety bonds in at least one of the States in the United States, or one of the Provinces in Canada, and has filed with this Commission the name and address of a person upon whom legal process may be served in each State in or through which the motor carrier operates. Such designation may from time to time be changed by like designation similarly filed, but shall be maintained during the effectiveness of any certificate of insurance or surety bond issued by the company, and thereafter with respect to any claims arising during the effectiveness of such certificate or bond. The term "motor carrier" as used in this section shall not include private carriers or carriers operating under the partial exemption from regulation in 49 U.S.C. 10523 and 10526.

[47 FR 55945, Dec. 14, 1982]

PART 1044—DESIGNATION OF PROCESS AGENT

Sec.
1044.1 Applicability.
1044.2 Form of designation.
1044.3 Eligible persons.
1044.4 Required States.
1044.5 Blanket designations.
1044.6 Cancellation or change.

Authority: 49 U.S.C. 10329, 10330, and 11705.

Source: 55 FR 11197, Mar. 27, 1990, unless otherwise noted.

§ 1044.1 Applicability.

These rules, relating to the filing of designations of persons upon whom court process may be served, govern motor carriers and brokers and, as of the moment of succession, their fiduciaries (as defined at 49 CFR 1043.10(a)).

§ 1044.2 Form of designation.

Designations shall be made on Form BOC-3, *Designation of Agent for Service of Process.* Only one completed current form may be on file. It must include all States for which agent designations are required. One copy must be retained by the carrier or broker at its principal place of business.

§ 1044.3 Eligible persons.

All persons (as defined at 49 U.S.C. 10102(18)) designated must reside or maintain an office in the State for which they are designated. If a State official is designated, evidence of his willingness to accept service of process must be furnished.

§ 1044.4 Required States.

(a) *Motor carriers.* Every motor carrier (or property or passengers) shall make a designation for each State in which it is authorized to operate and for each State traversed during such operations. Every motor carrier (including private carriers) operating in the United States in the course of transportation between points in a foreign country shall file a designation for each State traversed.

(b) *Brokers.* Every broker shall make a designation for each State in which its offices are located or in which contracts will be written.

§ 1044.5 Blanket designations.

Where an association or corporation has filed with the Commission a list of process agents for each State, motor carriers may make the required designations by using the following statement:

Those persons named in the list of process agents on file with the Interstate Commerce Commission by__________

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(Name of association or corporation) and any subsequently filed revisions thereof, for the States in which this carrier is or may be authorized to operate, including States traversed during such operations, except those States for which individual designations are named.

§ 1044.6 Cancellation or change.

A designation may be canceled or changed only by a new designation except that, where a carrier or broker ceases to be subject to § 1044.4 in whole or in part for 1 year, designation is no longer required and may be canceled without making another designation.

PART 1045—BROKERS OF PROPERTY

Sec.

1045.1 Applicability.
1045.2 Definitions.
1045.3 Records to be kept by brokers.
1045.7 Misrepresentation.
1045.9 Rebating and compensation.
1045.10 Duties and obligations of brokers.
1045.13 Accounting.

AUTHORITY: 49 Stat. 544, as amended, 546, as amended, 554, as amended; 49 U.S.C. 303, 304, 311; 49 U.S.C. 10321; 5 U.S.C. 553.

SOURCE: 45 FR 68942, Oct. 17, 1980, unless otherwise noted.

§ 1045.1 Applicability.

This part applies, to the extent provided therein, to all brokers of transportation by motor vehicle as defined in § 1045.2.

[32 FR 20034, Dec. 20, 1967]

§ 1045.2 Definitions.

(a) "Broker" means a person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier. Motor carriers, or persons who are employees or bona fide agents of carriers, are not brokers within the meaning of this section when they arrange or offer to arrange the transportation of shipments which they are authorized to transport and which they have accepted and legally bound themselves to transport.

(b) "Bona fide agents" are persons who are part of the normal organization of a motor carrier and perform duties under the carrier's directions pursuant to a preexisting agreement which provides for a continuing relationship, precluding the exercise of discretion on the part of the agent in allocating traffic between the carrier and others.

(c) "Brokerage" or "brokerage service" is the arranging of transportation or the physical movement of a motor vehicle or of property. It can be performed on behalf of a motor carrier, consignor, or consignee.

(d) "Non-brokerage service" is all other service performed by a broker on behalf of a motor carrier, consignor, or consignee.

§ 1045.3 Records to be kept by brokers.

(a) A broker shall keep a record of each transaction. The record shall show:

(1) The name and address of the consignor;

(2) The name, address, and lead MC-number of the originating motor carrier;

(3) The bill of lading or freight bill number;

(4) The amount of compensation received by the broker for the brokerage service performed and the name of the payer;

(5) A description of any non-brokerage service performed in connection with each shipment or other activity, the amount of compensation received for the service, and the name of the payer; and

(6) The amount of any freight charges collected by the broker and the date of payment to the carrier.

For purposes of this subsection, brokers may keep master lists of consignors and the address and lead docket number of the carrier, rather than repeating this information for each transaction.

(b) Brokers shall keep the records required by this section for a period of three years.

(c) Each party to a brokered transaction has the right to review the record of the transaction required to be kept by these rules.

§ 1045.7 Misrepresentation.

(a) A broker shall not perform or offer to perform any brokerage service (including advertising), in any name other than that in which its license is issued.

(b) A broker shall not, directly or indirectly, represent its operations to be that of a carrier. Any advertising shall show the broker status of the operation.

§ 1045.9 Rebating and compensation.

(a) A broker shall not charge or receive compensation from a motor carrier for brokerage service where:

(1) The broker owns or has a material beneficial interest in the shipment or

(2) The broker is able to exercise control over the shipment because the broker owns the shipper, the shipper owns the broker, or there is common ownership of the two.

(b) A broker shall not give or offer to give anything of value to any shipper, consignor or consignee (or their officers or employees) except inexpensive advertising items given for promotional purposes.

§ 1045.10 Duties and obligations of brokers.

Where the broker acts on behalf of a person bound by law or a Commission regulation as to the transmittal of bills or payments, the broker must also abide by the law or regulations which apply to that person.

[45 FR 68943, Oct. 17, 1980]

§ 1045.13 Accounting.

Each broker who engages in any other business shall maintain accounts so that the revenues and expenses relating to the brokerage portion of its business are segregated from its other activities. Expenses that are common shall be allocated on an equitable basis; however, the broker must be prepared to explain the basis for the allocation.

[45 FR 68943, Oct. 17, 1980]

PART 1047—EXEMPTIONS

Sec.
1047.1 Casual, occasional, or reciprocal transportation of passengers for compensation when such transportation is sold or arranged by anyone for compensation.
1047.2 Motor vehicles employed solely in transporting school children and teachers to or from school.
1047.10 Interstate operations by motor common carriers within a single State.

TRANSPORTATION AND NOTICE THEREOF BY AGRICULTURAL COOPERATIVE ASSOCIATIONS

1047.20 Definitions.
1047.21 Computation of tonnage allowable in nonfarm-non-member transportation.
1047.22 Nonmember transportation limitation and record keeping.
1047.23 Notice to the Commission.

PARTIAL EXEMPTION FOR AGRICULTURAL COMMODITIES, LIVESTOCK, AND FISH

1047.25 Commodoties that are not exempt under 49 U.S.C. 10526(a)(6).

PARTIAL EXEMPTION FOR MOTOR TRANSPORTATION OF PASSENGERS INCIDENTAL TO TRANSPORTATION BY AIRCRAFT

1047.45 Motor transportation of passengers incidental to transportation by aircraft.

AUTHORITY: 49 U.S.C. 10525, 10526, 10931.

SOURCE: 32 FR 20036, Dec. 20, 1967, unless otherwise noted.

§ 1047.1 Casual, occasional, or reciprocal transportation of passengers for compensation when such transportation is sold or arranged by anyone for compensation.

The partial exemption from regulation under the provisions of Part II of the Interstate Commerce Act of the casual, occasional, and reciprocal transportation of passengers by motor vehicle in interstate or foreign commerce for compensation as provided in section 203(b)(9) of the act be, and it is hereby, removed to the extent necessary to make applicable all provisions of Part II of the act to such transportation when sold or offered for sale, or provided or procured or furnished or arranged for, by any person who sells, offers for sale, provides, furnishes, contracts, or arranges for such transportation for compensation or as a regular occupation or business.

§ 1047.2 Motor vehicles employed solely in transporting school children and teachers to or from school.

The exemption set forth in section 203(b)(1) of the act shall not be construed as being inapplicable to motor vehicles being used at the time of operation in the transportation of schoolchildren and teachers to or from school, even though such motor vehicles are employed at other times in transportation beyond the scope of the exemption.

[36 FR 9022, May 18, 1971]

§ 1047.10 Interstate operations by motor common carriers within a single State.

Every common carrier by motor vehicle who proposes to engage in any operations in interstate or foreign commerce under the provisions of section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962, shall, prior to commencing such operations, (1) obtain from the Interstate Commerce Commission an appropriate Certificate of Registration covering the proposed operations, and (2) comply with the provisions of sections 215, 217, and 221(c) of the said Act and the Commission's requirements and rules and regulations thereunder pertaining to the filing of proper evidence of security for the protection of the public, to the filing and posting of appropriate tariff or tariffs, and to the designation of agents for service of process. Any such common carrier by motor vehicle who proposes to engage in any operations in interstate or foreign commerce under section 206(a)(6) of said Act, other than one seeking to obtain a Certificate of Registration by transfer, shall, in order to obtain a Certificate of Registration covering such operations, file with the Interstate Commerce Commission, Washington, DC 20423, an Application for Motor Carrier Certificate of Registration, which application shall be in the form, contain the information, and be served in the manner called for in Form OP-OR 100 (§ 1003.1 of this chapter.)

[32 FR 20036, Dec. 20, 1967, as amended at 39 FR 35367, Oct. 1, 1974]

TRANSPORTATION AND NOTICE THEREOF BY AGRICULTURAL COOPERATIVE ASSOCIATIONS

§ 1047.20 Definitions.

As used in the regulations in this part, the following terms shall have the meaning shown:

(a) *Cooperative association.* The term "cooperative association" means an association which conforms to the following definition in the Agricultural Marketing Act, approved June 15, 1929, as amended (12 U.S.C. 1141j):

> As used in this Act, the term "cooperative association" means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services. Provided, however, That such associations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requirements:
>
> First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; and
>
> Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.
>
> And in any case to the following:
>
> Third. That the association shall not deal in farm products, farm supplies and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by such association.

Associations which do not conform to such definition are not eligible to operate under the partial exemption of 49 U.S.C. 10526(a)(5).

(b) *Federation of cooperative associations.* The term "federation of cooperative associations" means a federation composed of either two or more cooperative associations, or one or more farmers, which federation possesses no greater powers or purposes than a cooperative association as defined in paragraph (a) of this section. Federations of cooperative associations which do not conform to such definition are not eligible to operate under the partial exemption of 49 U.S.C. 10526(a)(5).

(c) *Member.* The term "member" means any farmer or cooperative association which has consented to be, has been accepted as, and is a member in good standing in accordance with the constitution, bylaws, or rules of the cooperative association or federation of cooperative associations.

(d) *Farmer.* The term "farmer" means any individual, partnership, corporation, or other business entity to the extent engaged in farming operations either as a producer of agricultural commodities or as a farm owner.

(e) *Interstate transportation.* The term "interstate transportation" means transportation by motor vehicle in interstate or foreign commerce subject to the Commission's jurisdiction as set forth in 49 U.S.C. 10521.

(f) *Member transportation.* The term "member transportation" means transportation performed by a cooperative association or federation of cooperative associations for itself or for its members, but does not include transportation performed in furtherance of the nonfarm business of such members.

(g) *Nonmember transportation.* The term "nonmember transportation" means transportation performed by a cooperative association or federation of cooperative associations other than member transportation as defined in paragraph (f) of this section.

(h) *Fiscal year.* The term "fiscal year" means the annual accounting period adopted by the cooperative association or federation of cooperative associations for Federal income tax reporting purposes.

[43 FR 2397, Jan. 17, 1978, as amended at 45 FR 45524, July 3, 1980; 47 FR 13353, Mar. 30, 1982; 47 FR 15142, Apr. 8, 1982]

§ 1047.21 Computation of tonnage allowable in nonfarm-non-member transportation.

Interstate transportation performed by a cooperative association or federation of cooperative associations for nonmembers who are not farmers, cooperative associations, or federations of associations or the United States Government for compensation, (except transportation otherwise exempt under subchapter II, chapter 105, subtitle IV of title 49 of the United States Code) shall be limited to that which is incidental to its primary transportation operation and necessary for its effective performance. It shall in no event exceed 25 percent of its total interstate transportation services in any fiscal year, measured in terms of tonnage. A cooperative association or federation of cooperative associations may transport its own property, its members' property, property of other farmers and the property of other cooperatives or federations in accordance with existing law, except where the provisions of § 1047.22 may be applicable to the limit on member/nonmember transportation.

(a) The phrase "incidental to its primary transportation operation and necessary for its effective performance" means that the interstate transportation of the cooperative association or federation of cooperation association for nonmembers as described above is performed with the same trucks or tractors employed in a prior or subsequent trip in the primary transportation operation of the cooperative association or federation, that it is not economically feasible to operate the trucks or tractors empty on return trips (outbound trips in cases where the primary transportation operation is inbound to the association or federation), and that the additional income obtained from such transportation is necessary to make the primary transportation operation financially practicable. Transportation for nonmembers as described above performed by a cooperative or federation through the use of trucks or tractors trip-leased for one-way movements with the cooperative association or federation acting as leasee, is not incidental and necessary;

(b) The base tonnage to which the 25-percent limitation is applied is all tonnage of all kinds transported by the cooperative association or federation of cooperative associations in interstate or foreign commerce, whether for itself, its members or nonmembers, for or on behalf of the United States or any agency or instrumentality thereof, and that performed within the exemption provided by 49 U.S.C. 10526(a)(5).

[43 FR 2397, Jan. 17, 1978, as amended at 43 FR 21894, May 22, 1978; 45 FR 45524, July 3, 1980]

§ 1047.22 Nonmember transportation limitation and record keeping.

(a) *Overall limitation of nonmember transportation.* No cooperative association or federation of cooperative associations which is required to give notice to the Commission under § 1047.23 may engage in nonmember interstate transportation for compensation in any fiscal year which, measured in terms of tonnage, exceeds its total interstate member transportation in such fiscal year.

(b) *Records of interstate transportation when nonmember transportation is performed.* Any cooperative association or federation of cooperative associations performing interstate transportation for nonmembers and required to give notice to this Commission under § 1047.23 shall prepare and retain for a period of at least two years written records of all interstate transportation performed for members and nonmembers. These records shall contain:

(1) The date of the shipment,

(2) The names and addresses of the consignor and consignee,

(3) The origin and destination of the shipment,

(4) A description of the articles in the shipment,

(5) The weight or volume of the shipment,

(6) A description of the equipment used either by unit number or license number and, in the event this equipment is nonowned, the name and address of its owners and drivers,

(7) The total charges collected,

(8) A copy of all leases executed by the cooperative association or federation of cooperative associations to obtain equipment to perform transportation under 49 U.S.C. 10526(a)(5),

(9) Whether the transportation performed is:

(i) Member transportation,

(ii) Nonmember transportation for nonmembers who are farmers, cooperative associations, or federations thereof,

(iii) Other nonmember transportation, and if of class (iii), how the transportation was incidental and necessary as defined in § 1047.21(a).

[43 FR 2397, Jan. 17, 1978, as amended at 45 FR 45524, July 3, 1980]

§ 1047.23 Notice to the Commission.

A cooperative association or federation of cooperative associations which performs or proposes to perform interstate transportation for nonmembers, who are not farmers, cooperative associations, or federations of cooperative associations, under 49 U.S.C. 10526(a)(5) and (c) (which transportation is not otherwise exempt under Subchapter II, Chapter 105, Subtitle IV of Title 49 of the United States Code) shall notify the Commission of its intent to perform transportation. Notification shall be given prior to the commencement of operations and shall be in the form, contain the information, and be served in the manner called for in Form BOp 102. Notice must be filed with the Commission annually, within 30 days of its annual meeting. Following the receipt of a properly completed Form BOp 102, the information will be published in the FEDERAL REGISTER and put in a central file at the Commission, as public notice of the intent of the agricultural cooperative association or federation of cooperative associations to conduct interstate for-hire transportation for nonmembers under 49 U.S.C. 10526(a)(5). The information requested is of a continuing nature, and any changes in the information concerning officers, directors, and location of transportation records in the notice on file shall be brought to the Commission's attention by the filing of a supplemental form BOp 102 within 30 days of the change. Forms which are incomplete or not properly notarized will be rejected.

[45 FR 45525, July 3, 1980]

PARTIAL EXEMPTION FOR AGRICULTURAL COMMODITIES, LIVESTOCK AND FISH

§ 1047.25 Commodities that are not exempt under 49 U.S.C. 10526(a)(6).

Section 10526(a)(6) of the recodified Interstate Commerce Act (49 U.S.C. 10526(a)(6)) provides an exemption from regulation for motor vehicles used in carrying ordinary livestock, fish, and unmanufactured agricultural commodities. Certain specific commodities have been statutorily determined to be non-exempt. Administrative Ruling No. 133, which is reproduced below, is a list of those commodities that are non-exempt by statute.

ADMINISTRATIVE RULING NO. 133

LIST OF COMMODITIES THAT ARE NOT EXEMPT BY STATUTE UNDER 49 U.S.C. 10526(a)(6)

- *Animal fats*
- *Butter*
- *Canned fruits and vegetables*
- *Carnauba wax as imported in slabs or chunks*
- *Cattle, slaughtered*
- *Charcoal*
- *Cheese*
- *Coal*
- *Cocoa beans*
- *Coffee, beans, roasted, or instant*
- *Copra meal*
- *Cotton yarn*
- *Cottonseed cake or meal*
- *Diatomaceous earth*
- *Dinners, frozen*
- *Feeds:*
  - Alfalfa meal
  - Alfalfa pellets
  - Beet pulp
  - Bran shorts
  - Copra meal
  - Corn gluten
  - Distilled corn grain residues, with or without solubles added
  - Fish meal
  - Hominy feed
  - Middlings
  - Pelletized ground refuse screenings
  - Wheat bran
  - Wheat shorts
- *Fertilizer, commercial*
- *Fish:*
  - Canned or salted as a treatment for preserving
  - Cooked or partially cooked fish or shrimp, frozen or unfrozen
  - Hermetically sealed in containers as a treatment for preserving
  - Oil from fishes
  - Preserved, or treated for preserving, such as smoked, salted, pickled, spiced, corned or kippered
- *Flagstone*
- *Flaxseed meal*
- *Flour*
- *Forest products:*
  - Resin products, such as turpentine
- *Fruits and Berries:*
  - Bananas, fresh, dried, dehydrated, or frozen
  - Canned
  - Frozen
  - Hulls of oranges after juice extractions
  - Juice, fruit, plain or concentrated
  - Pies, frozen
  - Preserved, such as jam
  - Purees, strawberry and other, frozen
- *Grains:*
  - Oils extracted from grain
  - Popcorn, popped
  - Rice, precooked
  - Wheat germ
- *Gravel*
- *Hair, hog or other animal, product of slaughter of animal*
- *Hay, sweetened with 3 percent molasses by weight*
- *Hemp fiber*
- *Hides, green and salted*
- *Insecticides*
- *Limestone, agricultural*
- *Livestock:*
  - Monkeys
  - Race horses
  - Show horses
  - Zoo animals
- *Lumber, rough sawed or planed*
- *Maple syrup*
- *Meal:*
  - Alfalfa
  - Copra
  - Cottonseed
  - Fish
  - Flaxseed
  - Linseed
  - Peanut
  - Soybean
- *Meat and meat products, fresh, frozen or canned*
- *Milk and Cream:*
  - Chocolate
  - Condensed
  - Sterilized in hermetically sealed cans
- *Molasses*
- *Nuts (including peanuts):*
  - Peanut meal
  - Roasted or boiled
- *Oil, mint*
- *Oil, extracted from vegetables, grain, seed, fish or other commodity*
- *Pelts*
- *Pies, frozen*

Pigeons, racing
Pulp, beet
Pulp, sugar cane
Rock (except natural crushed, vesicular rock to be used for decorative purposes)
Rubber, crude, in bales
Rubber, latex, natural, liquid, from which water has been extracted and to which ammonia has been added
Sand
Seeds:
  Oil extracted from seeds
Skins, animal
Soil, potting
Soil, top
Soup, frozen
Sugar
Sugar cane pulp
Sugar raw
Syrup, cane
Syrup, maple
Tea
Tobacco:
  Cigars and cigarettes
  Homogenized
  Smoking
Top Soil
Trees:
  Sawed into lumber
Vegetables:
  Candied sweet potatoes, frozen
  Canned
  Cooked
  French fried potatoes
  Oil, extracted from vegetables
  Soup, frozen
  Soybean meal
Wool imported from a foreign country
Wool tops and noils
Wool waste (carded, spun, woven, or knitted)
Wool yarn

Note 1: Under 49 U.S.C. 10526(a)(6)(D), any listed fish or shellfish product that is not intended for human consumption is *exempt*.

Note 2: Under 49 U.S.C. 10526(a)(6)(E), any listed livestock feed, poultry feed, agricultural seeds, or plants that are transported to a site of agricultural production or to a business enterprise engaged in the sale to agricultural producers of goods used in agricultural production is *exempt*

[53 FR 17707, May 18, 1988]

PARTIAL EXEMPTION FOR MOTOR TRANSPORTATION OF PASSENGERS INCIDENTAL TO TRANSPORTATION BY AIRCRAFT

§ 1047.45 Motor transportation of passengers incidental to transportation by aircraft.

(a) *Passengers having an immediately prior or subsequent movement by air.* The transportation of passengers by motor vehicle is transportation incidental to transportation by aircraft provided (1) that it is confined to the transportation of passengers who have had or will have an immediately prior or immediately subsequent movement by air and (2) that the zone within which motor transportation is incidental to transportation by aircraft, except as it may be individually determined as provided in section (c) herein, shall not exceed in size the area encompassed by a 25-mile radius of the boundary of the airport at which the passengers arrive or depart and by the boundaries of the commercial zones (as defined by the Commission) of any municipalities any part of whose commercial zones falls within the 25-mile radius of the pertinent airport.

(b) *Substituted motor-for-air transportation due to emergency conditions.* Transportation of passengers by motor vehicle is transportation incidental to transportation by aircraft if it constitutes substituted motor-for-air service performed at the expense of the air carrier in emergency situations arising from the inability of the air carrier to perform air transportation due to adverse weather conditions, equipment failure, or other causes beyond the control of the air carrier.

(c) *Individual determination of exempt zones.* Upon its own motion or upon petition filed by any interested person, the Interstate Commerce Commission may in an appropriate proceeding, determine whether the area within which the transportation by motor vehicle of passengers having an immediately prior or subsequent movement by air must be performed, in order to come within the provisions of paragraph (a) of this section, should be individually determined with respect to any particular airport or city served by an airport, and whether there should be established therefor appropriate boundaries differing in extent from this defined in paragraph (a)(2) of this section.

(d) *Exempt zones and operations*—(1) *Dulles and Baltimore-Washington International Airports.* The transportation by motor vehicle, in interstate or foreign commerce, of passengers, having an immediately prior or subsequent movement by air, between Dulles International Airport, near Chantilly, Va., and Baltimore-Washington International Airport, near Baltimore, Md., is partially exempt from regulation under section 203(b)(7a) of the Interstate Commerce Act.

(2) *Savannah, Ga., Airport.* The transportation by motor vehicle, in interstate or foreign commerce, of passengers, having an immediately prior or subsequent movement by air, between Savannah, Ga., Airport and all points on Hilton Head Island, SC, is partially exempt from regulation under section 203(b)(7a) of the Interstate Commerce Act (49 U.S.C. 303).

(3) *Chicago O'Hare International Airport (Chicago, Ill.).* The transportation by motor vehicle, in interstate or foreign commerce, of passengers, having an immediately prior or subsequent movement by air, between O'Hare International Airport, at Chicago, Ill., on the one hand, and, on the other, points in Indiana on and north of U.S. Highway 30 and on and west of Indiana Highway 49, is partially exempt from regulation under section 203(b)(7a) of the Interstate Commerce Act (49 U.S.C. 303).

[32 FR 20036, Dec. 20, 1967, as amended at 37 FR 5252, Mar. 11, 1972; 42 FR 10003, Feb. 18, 1977; 42 FR 15705; Mar. 23, 1977]

PART 1048—COMMERCIAL ZONES

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AUTHORITY: 49 U.S.C. 10321 and 10526 and 5 U.S.C. 553.

§ 1048.1 Albany, N.Y.

The zone adjacent to, and commercially a part of Albany, N.Y., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulations under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Albany, N.Y., itself.

(b) All points within a line drawn eight miles beyond the municipal limits of Albany.

(c) All points in that area more than eight miles beyond the municipal limits of Albany bounded by a line as follows: Beginning at that point on the western boundary of Cohoes, N.Y., where it crosses the line described in paragraph (b) of this section, thence along the western and northern boundary of Cohoes to the Mohawk River thence along such river to the northern boundary of the Town of Waterford thence along the northern and eastern boundaries of the Town of Waterford to the northern boundary of the City of Troy (all of which city is included under the next provision).

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Albany or any other municipality included under the terms of paragraph (d) of this section.

[41 FR 56653, Dec. 29, 1976]

§ 1048.2 Beaumont, Tex.

The zone adjacent to, and commercially a part of Beaumont, Tex., within which transportation by motor vehicle in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act [49 U.S.C. 303(b)(8)] includes and is comprised of all points as follows:

(a) The municipality of Beaumont, Tex., itself;

(b) All points within a line drawn 8 miles beyond the municipal limits of Beaumont;

(c) All points in Jefferson County and Orange County, Tex.;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Beaumont or by any other municipality included under the terms of paragraph (d) of this section.

[41 FR 56653, Dec. 29, 1976]

§ 1048.3 Charleston, S.C.

The zone adjacent to, and commercially a part of Charleston, S.C., within which transportation by motor vehicle in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Charleston, S.C., itself;

(b) All points within a line drawn 6 miles beyond the municipal limits of Charleston;

(c) Those points in Charleston County, S.C., which are not within the areas described in paragraph (b) of this section; and those points in Berkley County, S.C., which are not within the areas described in paragraph (b) of this section, and which are west of South Carolina Highway 41; and all points in Dorchester County, SC.

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Charleston or by any other municipality included under the terms of paragraph (d) of this section.

[41 FR 56653, Dec. 29, 1976, as amended at 46 FR 28658, May 28, 1981]

§ 1048.4 Charleston, W. Va.

The zone adjacent to, and commercially a part of Charleston, W. Va., within which transportation by motor vehicle in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Charleston, W. Va., itself;

(b) All points within a line drawn 6 miles beyond the municipal limits of Charleston;

(c) Those points in Kanawha County, W. Va., which are not within the area described in paragraph (b) of this section; and those points in Putman County, W. Va., south of West Virginia Highway 34;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Charleston or by any other municipality included under the terms of paragraph (d) of this section.

[41 FR 56653, Dec. 29, 1976]

§ 1048.5 Lake Charles, La.

The zone adjacent to, and commercially a part of Lake Charles, La., within which transportation by motor vehicle in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Lake Charles, La., itself;

(b) All points within a line drawn 6 miles beyond the municipal limits of Lake Charles;

(c) Those points in Calcasieu Parish, La., which are not within the area described in paragraph (b) of this section; and which are east of Louisiana Highway 27 (western section);

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Lake Charles or by any other municipality included under the terms of paragraph (d) of this section.

[41 FR 56653, Dec. 29, 1976]

§ 1048.6 Pittsburgh, Pa.

The zone adjacent to, and commercially a part of Pittsburgh within which transportation by motor vehicle in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Pittsburgh, Pa., itself;

(b) All points within a line drawn 15 miles beyond the municipal limits of Pittsburgh;

(c) Those points in Allegheny County, Pa., which are not within the area described in paragraph (b) of this section;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Pittsburgh by any other municipality included under the terms of paragraph (d) of this section.

[41 FR 56654, Dec. 29, 1976]

§ 1048.7 Pueblo, Colo.

The zone adjacent to, and commercially a part of Pueblo, Colo., within which transportation by motor vehicle in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulations under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Pueblo, Colo., itself;

(b) All points within a line drawn 6 miles beyond the municipal limits of Pueblo;

(c) Those points in Pueblo County, Colo., which are not within the area described in paragraph (b) of this section;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality included under the terms of paragraph (d) of this section.

[41 FR 56654, Dec. 29, 1976]

§ 1048.8 Ravenswood, W. Va.

The zone adjacent to, and commercially a part of Ravenswood, W. Va., within which transportation by motor vehicle in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Ravenswood, W. Va., itself;

(b) All points within a line drawn 4 miles beyond the municipal limits of Ravenswood;

(c) Those points in Jackson County, W. Va., which are not within the area described in paragraph (b) of this section, and which are north of U.S. Highway 33;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Ravenswood or by any other municipality included under the terms of paragraph (d) of this section.

[41 FR 56654, Dec. 29, 1976]

§ 1048.9 Seattle, Wash.

The zone adjacent to, and commercially a part of Seattle, Wash., within which transportation by motor vehicle in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Seattle, Wash., itself;

(b) All points within a line drawn 15 miles beyond the municipal limits of Seattle;

(c) Those points in King County, Wash., which are not within the area described in paragraph (b) of this section, and which are west of a line beginning at the intersection of the line described in paragraph (b) of this section and Washington Highway 18, thence northerly along Washington Highway 18 to junction of Interstate Highway 90, thence westerly along Interstate Highway 90 to junction Washington Highway 203, thence northerly along Washington Highway 203 to the King County line; and those points in Snohomish County, Wash., which are not within the area described in paragraph (b) of this section and which are west of Washington Highway 9; and those points in Kitsap County, Wash., which are not within the area described in paragraph (b) of this section lying within the area bounded by a line beginning at the intersection of the line described in paragraph (b) of this section and Washington Highway 3 to the boundary of Olympic View Industrial Park/ Bremerton-Kitsap County Airport, thence westerly, southerly, easterly, and northerly along the boundary of Olympic View Industrial Park/ Bremerton-Kitsap County Airport to its juncture with Washington Highway 3 to its intersection with the line described in paragraph (b) of this section.

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Seattle or by any other municipality included under the terms of paragraph (d) of this section.

[41 FR 56654, Dec. 29, 1976, as amended at 46 FR 25314, May 6, 1981]

§ 1048.10 Washington, D.C.

The zone adjacent to, and commercially a part of Washington, D.C., within which transportation by motor vehicle in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Washington, D.C., itself;

(b) All points within a line drawn 15 miles beyond the municipal limits of Washington, D.C.

(c) All points in Fairfax and Loudoun Counties, VA, and all points in Prince William County, VA, including the City of Manassas, VA, and the City of Manassas Park, VA.

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Washington, D.C., or by any other municipality included under the terms of paragraph (d) of this section.

[41 FR 56654, Dec. 29, 1976, as amended at 46 FR 56424, Nov. 17, 1981]

§ 1048.11 Twin Cities.

For the purpose of determining commercial zones, utilizing the general population-mileage formula as set forth in § 1048.101, each of the following combinations of cities shall be considered as a single municipality:

(a) Having a population equal to the sum of their combined populations, and

(b) Having boundaries comprised of their combined corporate limits, with the common portion thereof disregarded:

(1) Bluefield, Va.-W. Va.

(2) Bristol, Va.-Tenn.

(3) Davenport, Iowa, and Rock Island and Moline, Ill.

(4) Delmar, Del-Md.

(5) Harrison, Ohio-West Harrison, Ind.

(6) Junction City, Ark.-La.

(7) Kansas City, Mo.-Kansas City, Kans.

(8) Minneapolis-St. Paul, Minn.

(9) St. Louis, Mo.-East St. Louis, Ill.

(10) Texarkana, Ark.-Tex.

(11) Texhoma, Tex.-Okla.

(12) Union City, Ind.-Ohio.

[41 FR 56654, Dec. 29, 1976]

§ 1048.12 Consolidated governments.

The zone adjacent to, and commercially a part of a consolidated government within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) All points within the boundaries of the consolidated government.

(b) All points beyond the boundaries of the consolidated government which were at any time within the commercial zone of the formerly independent core municipality.

(c) When the present population of the formerly independent core municipality is identifiable, all points beyond the boundaries of the consolidated government which are within the territory determined by the most recent population-mileage formula measured from the limits of the formerly independent core municipality.

(d) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the consolidated government or by any other municipality included under the terms of paragraphs (a), (b), or (c) of this section.

[41 FR 56654, Dec. 29, 1976]

§ 1048.13 New Jersey Area in which ex-maritime and ex-rail traffic will share in New York, N.Y., commercial zone.

The exemption provided by section 203(b)(8) of the Interstate Commerce Act, of transportation by motor vehicle, in interstate or foreign commerce, is hereby expressly extended to transportation which is performed wholly between points in New Jersey south of Interstate 495 and New Jersey Highway 3, east of the Garden State Parkway, and north of the Raritan River, on the one hand, and, on the other, points in the New York, N.Y., commercial zone as determined by application of § 1048.101, restricted to shipments that have had a prior or will have subsequent movement by rail or by water.

[41 FR 56655, Dec. 29, 1976]

§ 1048.14 Lexington-Fayette Urban County, Ky.

The zone adjacent to and commercially a part of Lexington-Fayette Urban County, Ky., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) Lexington-Fayette Urban County, Ky., itself.

(b) All other municipalities and unincorporated areas within 5 miles of the intersection of U.S. Highway 27 (Nicholasville Road) with the corporate boundary line between Jessamine County, Ky., and Lexington-Fayette Urban County, Ky.

[39 FR 13769, May 30, 1974. Redesignated at 41 FR 56655, Dec. 29, 1976]

§ 1048.15 Los Angeles, Calif., Harbor Zone.

The Los Angeles, Calif., Harbor Zone shall include all points within a line beginning at the Pacific Ocean and extending easterly along Rosencrans Avenue to its point of intersection with the western municipal limits of Compton, thence in an easterly direction along the northern municipal limits of Compton to the point where the eastern municipal limits of Compton and Rosencrans Avenue intersect, thence along Rosencrans Avenue in an easterly direction to its intersection with California Highway 19, thence extending southerly along California Highway 19 to its intersection with California Highway 91, thence easterly along California Highway 91, to the Los Angeles-Orange County line, thence south along said county line to the Pacific Ocean.

[41 FR 56655, Dec. 29, 1976]

§ 1048.16 Syracuse, N.Y.

The zone adjacent to, and commercially a part of Syracuse, N.Y., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for shipment to or from points beyond such zone, is partially exempt from regulation under section 203 (b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8) includes and is comprised of all points as follows:

(a) The municipality of Syracuse, N.Y., itself;

(b) All points within a line drawn 10 miles beyond the municipal limits of Syracuse;

(c) Those points in the towns of Van Buren and Lysander, Onondaga County, N.Y., which are not within the area described in paragraph (b) of this section, but which are within an area bounded by a line beginning at the intersection of new New York Highway 48 with the line described in (b) of this sectio, thence northwesterly along new New York Highway 48 to junction New York Highway 370, thence westerly along New York Highway 370 to junction Emerick Road, thence northerly along Emerick Road to junction Dunham Road, thence northerly along Dunham road to junction New York Highway 192, thence easterly along New York Highway 192 to junction new New York Highway 48, thence northerly along new New York Highway 48 to junction New York Highway 213, thence easterly along New York Highway 213 to junction New York Highway 213A, thence easterly along New York Highway 213A to junction New York Highway 37, thence southerly along New York Highway 37 to its intersection with the line in (b) above;

(d) All of any municipality any part of which is within the limits of the combined area defined in (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Syracuse or any other municipality included under the terms of (d) of this section.

[42 FR 44816, Sept. 7, 1977]

§ 1048.17 Spokane, Wash.

The zone adjacent to, and commercially a part of Spokane, WA, within which transportation by motor vehicle, in interstate or foreign commerce, not under control, management, or arrangement for shipment to or from points beyond such zone, is partially exempt from regulation under 49

U.S.C. 10526(b) includes and is comprised of all points as follows:

(a) The municipality of Spokane, WA, itself,

(b) All points within a line drawn 8 miles beyond the municipal limits of Spokane;

(c) All points within that area more than 8 miles beyond the municipal limits of Spokane bounded by a line as follows: From the intersection of the line described in (b) of this section and U.S. Highway 2, thence westerly along U.S. Highway 2 to junction Brooks Road, thence southerly along Brooks Road to junction Hallett Road, thence easterly along Hallett Road to its intersection with the line described in (b) of this section;

(d) All of any municipality any part of which is within the limits of the combined areas in (b) and (c) of this section; and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Spokane or any other municipality included under the terms of (d) of this section.

[45 FR 62085, Sept. 18, 1980]

§ 1048.18 Tacoma, Wash.

The zone adjacent to, and commercially a part of Tacoma, WA, within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for shipment to or from points beyond such zone, is partially exempt from regulation under section 49 U.S.C. 10526(b)(1) of the Interstate Commerce Act, includes and is comprised of all points as follows:

(a) The municipality of Tacoma, WA, itself;

(b) All points within a line drawn 8 miles beyond the municipal limits of Tacoma;

(c) Those points in Pierce County, WA, which are not within the area described in paragraph (b) of this section but which are on Washington Highway 162 beginning at its intersection with the line described in paragraph (b) of this section, extending to and including Orting, WA, and all points within the Orting commercial zone.

(d) All of any municipality any part of which is within the limits of the combined area defined in (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Tacoma or any other municipality included under the terms of (d) of this section.

[45 FR 66460, Oct. 7, 1980]

§ 1048.19 Chicago, IL.

The zone adjacent to, and commercially a part of Chicago, IL, within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a shipment to or from such zone, is partially exempt from regulation under section 10526(b)(1) of the Interstate Commerce Act (49 U.S.C. 10526(b)(1)), includes and is comprised of all points as follows:

(a) The municipality of Chicago, IL, itself;

(b) All points within a line drawn 20 miles beyond the municipal limits of Chicago;

(c) All points in Lake County, IL.

(d) All of any municipality any part of which is within the limits of the combined area defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality included under the terms of paragraph (d) of this section.

[46 FR 11286, Feb. 6, 1981]

§ 1048.20 New York, NY.

The zone adjacent to, and commercially a part of, New York, NY, within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for shipment to or from points beyond such zone is partially exempt from regulation under section 49 U.S.C. 10526(b)(1) of the Interstate Commerce Act (49 U.S.C. 10526(b)(1)), includes and is comprised of all points as follows:

(a) The municipality of New York, NY, itself;

(b) All points within a line drawn 20 miles beyond the municipal limits of New York, NY;

(c) All points in Morris County, NJ;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c); and

(e) All of any municipality wholly surrounded, or so surrounded except by a water boundary, by the municipality of New York or by any other municipality included under the terms of paragraph (d) of this section.

[50 FR 34478, Aug. 26, 1985]

§ 1048.21 Cameron, Hidalgo, Starr, and Willacy Counties, TX.

(a) Transportation within a zone comprised of Cameron, Hidalgo, Starr, and Willacy Counties, TX, by motor carriers of property, in interstate or foreign commerce, not under common control, management, or arrangement for shipment to or from points beyond such zone, is partially exempt from regulation under section 10526(b)(1) of the Interstate Commerce Act (49 U.S.C. 10526(b)(1)).

(b) To the extent that commercial zones of municipalities within the four counties (as determined under § 1048.101) extend beyond the boundaries of this four-county zone, the areas of such commercial zones shall be considered to be part of the zone and partially exempt from regulation under section 10526(b)(1).

[51 FR 1815, Jan. 15, 1986]

§ 1048.100 Definitions.

For the purposes of this part, the following terms are defined:

(a) "Municipality" means any city, town, village, or borough which has been created by special legislative act or which has been, otherwise, individually incorporated or chartered pursuant to general State laws, or which is recognized as such, under the Constitution or by the laws of the State in which located, and which has a local government. It does not include a town of the township or New England type.

(b) "Contiguous municipalities" means municipalities, as defined in paragraph (a) of this section, which have at some point a common municipal or corporate boundary.

(c) "Unincorporated area" means any area not within the corporate or municipal boundaries of any municipality as defined in paragraph (a) of this section.

[32 FR 20040, Dec. 20, 1967]

§ 1048.101 Commercial zones determined generally, with exceptions.

The commercial zone of each municipality in the United States, with the exceptions indicated in the note at the end of this section, within which the transportation of passengers or property, in interstate or foreign commerce, when not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone, is exempt from all provisions of part II, Interstate Commerce Act, except the provisions of section 204 relative to the qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be deemed to consist of:

(a) The municipality itself, hereinafter called the base municipality;

(b) All municipalities which are contiguous to the base municipality;

(c) All other municipalities and all unincorporated area within the United States which are adjacent to the base municipality as follows:

(1) When the base municipality has a population less than 2,500 all unincorporated areas within 3 miles of its corporate limits and all of any other municipality any part of which is within 3 miles of the corporate limits of the base municipality,

(2) When the base municipality has a population of 2,500 but less than 25,000 all unincorporated areas within 4 miles of its corporate limits and all of any other municipality any part of which is within 4 miles of the corporate limits of the base municipality,

(3) When the base municipality has a population of 25,000 but less than 100,000 all unincorporated areas within 6 miles of its corporate limits and all of any other municipality any part of which is within 6 miles of the corporate limits of the base municipality, and

(4) When the base municipality has a population of 100,000 but less than 200,000 all unincorporated areas within 8 miles of its corporate limits and all of any other municipality any part of which is within 8 miles of the corporate limits of the base municipality.

(5) When the base municipality has a population of 200,000 but less than 500,000 all unincorporated areas within 10 miles of its corporate limits and all of any other municipality any part of which is within 10 miles of the corporate limits of the base municipality.

(6) When the base municipality has a population of 500,000 but less than 1 million, all unincorporated areas within 15 miles of its corporate limits and all of any other municipality any part of which is within 15 miles of the corporate limits of the base municipality.

(7) When the base municipality has a population of 1 million or more, all unincorporated areas within 20 miles of its corporate limits and all of any other municipality any part of which is within 20 miles of the corporate limits of the base municipality, and

(d) All municipalities wholly surrounded, or so surrounded except for a water boundary, by the base municipality, by any municipality contiguous thereto, or by any municipality adjacent thereto which is included in the commercial zone of such base municipality under the provisions of paragraph (c) of this section.

NOTE: Except: Municipalities the commercial zones of which have been or are hereafter individually or specially determined.

[32 FR 20040, Dec. 20, 1967, as amended at 34 FR 9870, June 26, 1969; 34 FR 15482, Oct. 4, 1969; 41 FR 56655, Dec. 29, 1976]

§ 1048.102 Controlling distances and population data.

In the application of § 1048.101:

(a) Air-line distances or mileages about corporate limits of municipalities shall be used.

(b) The population of any municipality shall be deemed to be the highest figure shown for that municipality in any decennial census since (and including) the 1940 decennial census.

(c) Contraction of municipal boundaries will not alter the size of commercial zones.

[32 FR 20040, Dec. 20, 1967, as amended at 37 FR 15701, Aug. 4, 1972; 50 FR 10233, Mar. 14, 1985]

PART 1049—TERMINAL AREAS

AUTHORITY: 49 Stat. 543, 544 and 546, as amended; 49 U.S.C. 302, 303, 304.

NOTE: In the application of this part, distances and population data shall be determined in the same manner as provided in § 1048.102 of this chapter. See also definitions in § 1048.100 of this chapter.

§ 1049.1 Terminal areas of motor carriers and household goods freight forwarders at municipalities served.

The terminal area within the meaning of section 202(c) of the Interstate Commerce Act (49 U.S.C. 302(c)) of any motor carrier of property subject to part II or of any household goods freight forwarder subject to part IV thereof, at any municipality authorized to be served by such motor carrier of property or motor carrier of passengers in the transportation of express or household goods freight forwarder, within which transportation by motor vehicle in the performance of transfer, collection, or delivery services may be performed by, or for, such motor carrier of property or household goods freight forwarder without compliance with the provisions, other than those in section 204 (49 U.S.C. 304) relative to qualifications and maximum hours of service of employees and safety of operation and equipment, of part II of the act consists of and includes all points or places which are:

(a) Within the commercial zone, as defined by this Commission, of that municipality, and

(b) Not beyond the limits of the operating authority of such motor carrier of property or household goods freight forwarder.

[32 FR 20049, Dec. 20, 1967, as amended at 51 FR 44297, Dec. 9, 1986]

§ 1049.2 Terminal areas of motor carriers and household goods freight forwarders at unincorporated communities served.

The terminal area within the meaning of section 202(c) of the Interstate Commerce Act (49 U.S.C. 302(c)) of any motor carrier of property subject to part II (49 U.S.C. 301 et seq.) or any household goods freight forwarder subject to part IV thereof (49 U.S.C. 1001 et seq.), at any unincorporated community having a post office of the same name which is authorized to be served by such motor carrier of property or motor carrier of passengers in the transportation of express or household goods freight forwarder, within which transportation by motor vehicle in the performance of transfer, collection, or delivery services may be performed by, or for, such motor carrier of property or household goods freight forwarder without compliance with the provisions, other than those in section 204 (49 U.S.C. 304) relating to qualifications and maximum hours of service of employees and safety of operations and equipment, of part II of the act, consists of:

(a) All points in the United States which are located within the limits of the operating authority of the motor carrier of property or household goods freight forwarder involved, and within 3 miles of the post office at such authorized unincorporated point if it has a population less than 2,500, within 4 miles if it has a population of 2,500 but less than 25,000, or within 6 miles if it has a population of 25,000 or more;

(b) All of any municipality any part of which is included under paragraph (a) of this section; and

(c) Any municipality wholly surrounded by any municipality included under paragaph (b) of this section, or so wholly surrounded except for a water boundary.

[32 FR 20049, Dec. 20, 1967, as amended at 41 FR 56655, Dec. 29, 1976; 51 FR 44297, Dec. 9, 1986]

PART 1051—RECEIPTS AND BILLS

Sec.
1051.1 Bills of lading.
1051.2 Expense bills.
1051.3 Low value packages.

AUTHORITY: 49 U.S.C. 10321 and 11144; 5 U.S.C. 553.

SOURCE: 55 FR 11198, Mar. 27, 1990, unless otherwise noted.

§ 1051.1 Bills of lading.

Every motor common carrier shall issue a receipt or bill of lading for property tendered for transportation in interstate or foreign commerce containing the following information:

(a) Names of consignor and consignee.

(b) Origin and destination points.

(c) Number of packages.

(d) Description of freight.

(e) Weight, volume, or measurement of freight (if applicable to the rating of the freight).

The carrier shall keep a copy of the receipt or bill of lading as prescribed in 49 CFR part 1220.

§ 1051.2 Expense bills.

(a) *Property.* Every motor common carrier shall issue a freight or expense bill for each shipment transported containing the following information:

(1) Names of consignor and consignee (except on a reconsigned shipment, not the name of the original consignor).

(2) Date of shipment.

(3) Origin and destination points (except on a reconsigned shipment, not the original shipping point unless the final consignee pays the charges from that point).

(4) Number of packages.

(5) Description of freight.

(6) Weight, volume, or measurement of freight (if applicable to the rating of the freight).

(7) Exact rate(s) assessed.

(8) Total charges due, including the nature and amount of any charges for special service and the points at which such service was rendered.

(9) Route of movement and name of each carrier participating in the transportation.

(10) Transfer point(s) through which shipment moved.

(11) Address where remittance must be made or address of bill issuer's principal place of business.

The shipper or receiver owing the charges shall be given the original freight or expense bill and the carrier shall keep a copy as prescribed at 49 CFR part 1220. If the bill is electronically transmitted (when agreed to by the carrier and payor), a receipted copy shall be given to the payor upon payment.

(b) *Charter service.* Every motor passenger common carrier providing charter service shall issue an expense bill containing the following information:

(1) Serial number, consisting of one of a series of consecutive numbers assigned in advance and imprinted on the bill.

(2) Name of carrier.

(3) Names of payor and organization, if any, for which transportation is performed.

(4) Date(s) transportation was performed.

(5) Origin, destination, and general routing of trip.

(6) Identification and seating capacity of each vehicle used.

(7) Number of persons transported.

(8) Mileage upon which charges are based, including any deadhead mileage, separately noted.

(9) Applicable rates per mile, hour, day, or other unit.

(10) Itemized charges for transportation, including special services and fees.

(11) Total charges assessed and collected.

The carrier shall keep a copy of all expense bills issued for the period prescribed at 49 CFR part 1220. If any expense bill is spoiled, voided, or unused for any reason, a copy or written record of its disposition shall be retained for a like period.

§ 1051.3 Low value packages.

The carrier and shipper may elect to waive the above provisions and use a more streamlined recordkeeping or documentation system for distribution of "low value" packages. This includes the option of shipping such packages under the released rates provisions at 49 U.S.C. 10730. The shipper is responsible ultimately for determining which packages should be designated as low value. A useful guideline for this determination is an invoice value less than or equal to the costs of preparing a loss or damage claim.

PART 1052—HANDLING OF C.O.D. SHIPMENTS

Sec.
1052.1 Applicability.
1052.2 Tariff requirements.
1052.3 Collection and remittance.

AUTHORITY: 49 U.S.C. 10101, 10321, 10922, 10762, and 11101, and 5 U.S.C. 553.

SOURCE: 32 FR 20050, Dec. 20, 1967, unless otherwise noted.

§ 1052.1 Applicability.

The rules and regulations in this part apply to the transportation by motor vehicle of c.o.d. shipments by all common carriers of property subject to part II of the Interstate Commerce Act, except such transportation which is auxiliary to or supplemental of transportation by railroad and performed on railroad bills of lading, and except such transportation which is performed for freight forwarders and on freight forwarder bills of lading.

§ 1052.2 Tariff requirements.

No common carrier of property subject to the provisions of part II of the Interstate Commerce Act, except as otherwise provided in § 1052.1, shall render any c.o.d. service unless such carrier has published, posted and filed tariffs which contain the rates, charges and rules governing such service, which rules shall conform to the regulations in this part.

§ 1052.3 Collection and remittance.

Every common carrier of property subject to the Interstate Commerce Act, except as otherwise provided in § 1052.1, which chooses to provide c.o.d. service may publish and maintain, or cause to be published and maintained for its account, a tariff or tariffs which set forth nondiscriminatory rules governing c.o.d. service and the collection and remittance of c.o.d.

funds. Alternatively, any carrier that provides c.o.d. service, but does not wish to publish and maintain, or cause to be published and maintained, its own nondiscriminatory tariff, may adopt a rule requiring remittance of each c.o.d. collection directly to the consignor or other person designated by the consignor as payee within fifteen (15) days after delivery of the c.o.d. shipment to the consignee.

[52 FR 45966, Dec. 3, 1987]

PART 1053—CONTRACTS FOR TRANSPORTATION OF PROPERTY

Sec.

1053.1 Contracts or agreements to be in writing.
1053.2 Contract carriers of bullion, etc., relieved of requirements.
1053.3 Contract carrier authority-definition of shipper.

AUTHORITY: 5 U.S.C. 553, 559, and 49 U.S.C. 10321, 10764.

SOURCE: 45 FR 58866, Sept. 5, 1980, unless otherwise noted.

§ 1053.1 Contracts or agreements to be in writing.

No contract carrier by motor vehicle, as defined in 49 U.S.C. 10102(15) shall transport property for hire in interstate or foreign commerce except under special and individual contracts or agreements which shall be in writing, shall provide for transportation for a particular shipper or shippers, shall be bilateral and impose specific obligations upon both carrier and shipper or shippers, shall cover a series of shipments during a stated period of time in contrast to contracts of carriage governing individual shipments, and copies of which contracts or agreements shall be preserved by the carriers parties thereto so long as such contracts or agreements are in force and for at least one year thereafter.

[45 FR 58866, Sept. 5, 1980, as amended at 54 FR 26208, June 22, 1989]

§ 1053.2 Contract carriers of bullion, etc., relieved of requirements.

Contract carriers of bullion, currency, jewels, and other precious and other very valuable articles are relieved of the requirements of executing and preserving contracts in the form and manner prescribed in § 1053.1.

§ 1053.3 Contract carrier authority-definition of shipper.

Contracts of contract carriers, as required by Ex Parte No. MC-12 (1 M.C.C. 628), must be between the contract carrier and a particular shipper or shippers. The term "shipper" means the person who controls the transportation and refers to the actual shipper rather than an intermediary. Such shipper may be nominally either the consignor or consignee, but must be one or the other. The payment of the charges for the transportation is evidence that the person who pays is the person who controls the transportation and such person will be presumed to be the shipper. However, this presumption is rebuttable and can be rebutted by evidence demonstrating that a person not paying the transportation charges controls the selection of the carrier and the routing of the shipment. In such an instance, the person selecting the carrier and controlling the routing of the shipment would be presumed to be the shipper. The contract carrier may not transport property for shippers other than the shipper with whom he has a contract.

PART 1054—INCIDENTAL CHARTER RIGHTS

Sec.

1054.1 Applicability.
1054.2 Authority.
1054.3 Exceptions.

AUTHORITY: 5 U.S.C. 553 and 559 and 49 U.S.C. 10321, 10922, and 10932.

SOURCE: 54 FR 46619, Nov. 6, 1989, unless otherwise noted.

§ 1054.1 Applicability.

The regulations in this part apply to incidental charter rights authorized under 49 U.S.C. 10932(c). These regulations do not apply to interpreting authority contained in a certificate to transport passengers in special and/or charter operations.

§ 1054.2 Authority.

Motor carriers transporting passengers, in interstate or foreign commerce, over regular routes authorized in a certificate issued as a result of an application filed before January 2, 1967, may transport special or chartered parties, in interstate or foreign commerce, between any points and places in the United States (including Alaska and Hawaii). The term "special or chartered party" means a group of passengers who, with a common purpose and under a single contract, and at a fixed charge for the vehicle in accordance with the carrier's tariff, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group to a specified destination or for a particular itinerary.

§ 1054.3 Exceptions.

(a) Incidental charter rights do not authorize the transportation of passengers to whom the carrier has sold individual tickets or with whom the carrier has made separate and individual transportation arrangements.

(b) Service provided under incidental charter rights may not be operated between the same points or over the same route so frequently as to constitute a regular-route service.

(c) Passenger transportation within the Washington Metropolitan Area Transit District (as defined in the Washington Metropolitan Area Transportation Regulation Compact, Pub. L. No. 86-794, 74 Stat. 1031 (1960), as amended by Pub. L. No. 87-767, 76 Stat. (1962) is not authorized by these regulations, but is subject to the jurisdiction and regulations of the Washington Metropolitan Area Transportation Commission.

(d) A private or public recipient of governmental assistance (within the meaning of 49 U.S.C. 10922(c)(1)(F)) may provide service under incidental charter rights only for special or chartered parties originating in the area in which the private or public recipient provides regularly scheduled mass transportation services under the specific qualifying certificate that confers its incidental charter rights.

PART 1055—DISCRIMINATION IN OPERATIONS OF INTERSTATE MOTOR COMMON CARRIERS OF PASSENGERS

Sec.
1055.1 Discrimination prohibited.
1055.2 Notice to be printed on tickets.
1055.3 Discrimination in terminal facilities.
1055.4 Notice to be posted at terminal facilities.
1055.5 Carriers not relieved of existing obligations.
1055.6 Reports of interference with regulations.
1055.10 Definitions.

AUTHORITY: 52 Stat. 1237, 49 U.S.C. sec. 304.

SOURCE: 36 FR 1338, Jan. 28, 1971, unless otherwise noted.

§ 1055.1 Discrimination prohibited.

No motor common carrier of passengers subject to section 216 of the Interstate Commerce Act shall operate a motor vehicle in interstate or foreign commerce on which the seating of passengers is based upon race, color, creed, or national origin.

§ 1055.2 Notice to be printed on tickets.

Every motor common carrier of passengers subject to section 216 of the Interstate Commerce Act shall cause to be printed on every ticket sold by it for transportation on any vehicle operated in interstate or foreign commerce a plainly legible notice as follows: "Seating aboard vehicles operated in interstate or foreign commerce is without regard to race, color, creed, or national origin."

NOTE: The following interpretation of the provisions of § 1055.2 appears at 27 FR 230, Jan. 9, 1962:

The words, "Seating aboard vehicles operated in interstate or foreign commerce is without regard to race, color, creed, or national origin", should appear on the face of every ticket coming within the purview of the section. If the ticket is in parts or consists of additional elements, such as coupons, identification stubs, or checks, it shall be sufficient for the purposes of § 1055.2 that the notice appear only once on the ticket and be placed on the face of that portion of the ticket which is held by the passenger.

§ 1055.3 Discrimination in terminal facilities.

No motor common carrier of passengers subject to section 216 of the Interstate Commerce Act shall in the operation of vehicles in interstate or foreign commerce provide, maintain arrangements for, utilize, make available, adhere to any understanding for the availability of, or follow any practice which includes the availability of, any terminal facilities which are so operated, arranged, or maintained as to involve any separation of any portion thereof, or in the use thereof on the basis of race, color, creed, or national origin.

§ 1055.4 Notice to be posted at terminal facilities.

No motor common carrier of passengers subject to section 216 of the Interstate Commerce Act shall in the operation of vehicles in interstate or foreign commerce utilize any terminal facility in which there is not conspicuously displayed and maintained so as to be readily visible to the public a plainly legible sign or placard containing the full text of these regulations. Such sign or placard shall be captioned: "Public Notice: Regulations Applicable to Vehicles and Terminal Facilities of Interstate Motor Common Carriers of Passengers, by order of the Interstate Commerce Commission."

§ 1055.5 Carriers not relieved of existing obligations.

Nothing in this regulation shall be construed to relieve any interstate motor common carrier of passengers subject to section 216 of the Interstate Commerce Act of any of its obligations under the Interstate Commerce Act or its certificate(s) of public convenience and necessity.

§ 1055.6 Reports of interference with regulations.

Every motor common carrier of passengers subject to section 216 of the Interstate Commerce Act operating vehicles in interstate or foreign commerce shall report to the Secretary of the Interstate Commerce Commission, within fifteen (15) days of its occurrence, any interference by any person, municipality, county, parish, State, or body politic with its observance of the requirements of these regulations in this part. Such report shall include a statement of the action that such carrier may have taken to eliminate any such interference.

§ 1055.10 Definitions.

For the purpose of these regulations the following terms and phrases are defined:

(a) *Terminal facilities.* As used in these regulations the term "terminal facilities" means all facilities, including waiting room, rest room, eating, drinking, and ticket sales facilities which a motor common carrier makes available to passengers of a motor vehicle operated in interstate or foreign commerce as a regular part of their transportation.

(b) *Separation.* As used in § 1055.3, the term "separation" includes, among other things, the display of any sign indicating that any portion of the terminal facilities are separated, allocated, restricted, provided, available, used, or otherwise distinguished on the basis of race, color, creed, or national origin.

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

Sec.

1056.1 Applicability and definitions.
1056.2 Information for shippers.
1056.3 Estimates of charges.
1056.4 Final charges on shipments subject to minimum weight or volume provisions.
1056.5 Order for service.
1056.6 Receipt or bill of lading.
1056.7 Determination of weights.
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AUTHORITY: 49 U.S.C. 10321, 11109, 11110 and 5 U.S.C. 553.

SOURCE: 46 FR 16218, Mar. 11, 1981, unless otherwise noted.

§ 1056.1 Applicability and definitions.

(a) The regulations in this part are applicable to the operations of motor carriers engaged in the transportation of household goods as defined in paragraph (b)(1) of this section in interstate or foreign commerce.

(b) *Definitions.* As used in this part:

(1) *Household Goods.* The term "household goods" means personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling and such other similar property as the Commission may provide by regulation; except that this definition shall not be construed to include property moving from a factory or store except such property as a householder has purchased with intent to use in his dwelling and which is transported at the request of, and the transportation charges paid to the carrier by the householder. The regulations under this part do not apply to the transportation of property transportable under 49 U.S.C. 10102(10) (B) and (C).

(2) *Reasonable dispatch.* The term "reasonable dispatch" means the performance of transportation, excluding transportation provided under tariff provisions requiring guaranteed service dates, on the dates or during the period of time agreed upon by the carrier and the shipper and shown on the Order For Service/Bill of Lading, *Provided,* That the defenses of force majeure as construed by the courts shall not be denied the carrier.

(3) *Advertisement.* The term "advertisement" means any communication to the public in connection with an offer or sale of any interstate or foreign transportation service, but shall not be construed to include a listing of a carrier name, address, and telephone number in a telephone directory or similar publication.

(4) *Certified Scales.* As used in this part, a certified scale is any scale designed for weighing motor vehicles, including trailers or semi-trailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority. A certified scale may also be a platform or warehouse type scale properly inspected and certified.

(5) *Individual Shipper.* As used in this part, "individual shipper" refers to any person who is the consignor or consignee of a household goods shipment and is identified as such in the bill of lading contract and owns the goods being transported.

(6) *Commercial Shipper.* As used in this part, "commercial shipper" refers to (a) any person, excluding the federal government, who is named as the consignor and/or consignee in a bill of lading contract who is not the owner of the goods being transported but who assumes the responsibility for payment of the transportation and other tariff charges for the account of the beneficial owner of the goods, normally an employee of the consignor and/or consignee; or, (b) a freight forwarder which tenders a shipment to a carrier in furtherance of authorized or exempt freight forwarder operations.

(7) *Government Bill of Lading Shipper.* As used in this part, "government bill of lading shipper" refers to any person whose property is transported under the terms and conditions of a government bill of lading issued by any department or agency of the federal government to the carrier responsible for the transportation of the shipment.

(8) *Other terms.* Where any other terms used in the regulations in this part are defined in 49 U.S.C. 10102, such definitions shall be controlling. Where terms are used in this part which are neither defined herein nor in 49 U.S.C. 10102, they shall have the ordinary practical meaning of such terms.

[46 FR 16218, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981]

§ 1056.2 Information for shippers.

(a) Prior to the execution of an order for service of a shipment of household goods, as defined in

§ 1056.1(b)(1), every motor common carrier holding out to perform the service shall cause to be furnished to the prospective individual shipper the following publications.

(1) Publication OCP-100, *Your Rights and Responsibilities When You Move.*

(2) A concise, easy-to-read, accurate summary of any dispute settlement program in which the carrier participates, as provided in 49 U.S.C. 11711 and approved by the Commission.

(3) A copy of the Form OCP-101, *Annual Performance Report,* most recently filed with the Commission if the carrier is required by § 1056.18 to prepare and file such report.

(4) A written description of the customer complaint and inquiry handling procedures established and maintained by the carrier. Included in this description shall be a telephone number which the shipper may use to communicate with the carrier, accompanied by a clear and concise statement concerning who shall pay for such calls.

(b) General Requirements: (1) The text and format of the publication shall not be changed without the written approval of the Director, Office of Consumer Protection, Interstate Commerce Commission.

(2) The Director, Office of Consumer Protection, Interstate Commerce Commission, shall, within 30 days following the effective date of a decision of the Interstate Commerce Commission changing any rule or regulation published at 49 CFR Part 1056, cause to be published in the FEDERAL REGISTER a notice of amendment to Publication OCP-100 reflecting such change or changes.

(3) The dimensions of the publication shall be optional, *Provided, however,* The product of multiplying the length by the width shall be not less than 36 square inches.

(4) The color and design of the front and back cover of the publication shall be optional. *Provided,* the only words printed or appearing on the front cover shall be "*Your Rights and Responsibilities When You Move.*"

[46 FR 16218, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981]

§ 1056.3 Estimates of charges.

(a) *Binding estimates.* Motor common carriers engaged in the transportation of household goods as defined in § 1056.1(b)(1) may provide in their tariffs for the preparation and furnishing to shippers of binding estimates of the costs which the shippers will be required to pay for the services included in the estimates. Binding estimates must be furnished in writing to the shipper or other person responsible for payment of the freight charges and a copy of each such estimate must be retained by the carrier as an addendum to the bill of lading. All such estimates shall have clearly indicated on its face that the estimate is binding on the carrier and that the charges shown are the charges which will be assessed for the services identified in the estimate. Binding estimates must clearly describe the shipment and all services to be provided.

(b) *Non-binding estimates.* Motor common carriers engaged in the transportation of household goods as defined in § 1056.1(b)(1) may provide estimates of the approximate costs which will be assessed for the transportation of such shipments. Non-binding estimates shall be reasonably accurate. Estimates of approximate costs shall not be binding on the carriers providing such estimates. The final charges on shipments moved on non-binding estimates shall be those appearing in the carriers' tariffs applicable to the transportation. Non-binding estimates must be furnished without charge and in writing to the shipper or other person responsible for payment of the freight charges and a copy of each such estimate must be retained by the carrier as an addendum to the bill of lading. All such estimates shall have clearly indicated on the face thereof that the estimate is not binding on the carrier and that the charges shown are the approximate charges which will be assessed for the services identified in the estimate. Non-binding estimates must clearly describe the shipment and all services to be provided.

(c) *Estimated charges required to be entered on the order for service and bill of lading.* Motor common carriers furnishing non-binding estimates shall enter the estimated charges on the order for service, if an order for service is required, and on the bill of lading.

(d) *Maximum charges required to be paid at time of delivery on collect on delivery shipments subject to non-binding estimates of approximate costs.* At time of delivery of a collect on delivery shipment, except when such shipment is delivered to a warehouse for storage at the request of the shipper, on which a non-binding estimate of the approximate costs has been furnished by the carrier under the provisions of paragraph (b), the shipper may request delivery of the shipment upon payment, in a form acceptable to the carrier, of an amount not exceeding 110 percent of the estimated charges. The carrier shall, upon request of the shipper, relinquish possession of the shipment upon payment of not more than 110 percent of the estimated charges and shall defer demand for the payment of the balance of any remaining charges for a period of 30 days following the date of delivery.

§ 1056.4 Final charges on shipments subject to minimum weight or volume provisions.

(a) Motor common carriers engaged in the transportation of household goods, as defined in § 1056.1(b)(1), providing service for individual shippers on rates based on the transportation of a minimum weight or volume, must indicate on the order for service the minimum weight or volume-based rates, and the the minimum charges applicable to the shipment.

(b) Failure to comply with the requirements of paragraph (a) shall require, and the governing tariff shall contain, a rule providing that the final charges relating to such a shipment be computed based on the actual weight or volume of the shipment.

§ 1056.5 Order for service.

(a) *Order for service required.* Every motor common carrier shall, prior to the receipt of a shipment of household goods as defined in § 1056.1(b)(1) to be moved for an individual shipper, prepare an order for service which contains the following mimunum information:

(1) Name and address and ICC docket number of carrier who is responsible for performing the service.

(2) Shipper's name, address and, if available, telephone number.

(3) Name, address and telephone number of the delivering carrier's office or agent located at or nearest to the destination of the shipment.

(4) A telephone number at which the shipper/consignee may contact the carrier or its designated agent.

(5) Agreed pickup date and agreed delivery date, or the agreed period or periods of time within which pickup, delivery, or the entire move, will be accomplished. If the shipment is to be transported on a guaranteed service basis, the guaranteed dates or periods of time for pickup, transportation and delivery and any penalty or per diem requirements of the agreement shall be entered under this item.

(6) Complete description of any special or accessorial services ordered; and minimum weight or volume charges applicable to the shipment.

(7) Any identification or registration number assigned the shipment by the carrier.

(8) Amount of estimated non-binding charges; method of payment of total charges; and, maximum amount required to be paid at time of delivery to obtain possession of the shipment or, the amount of charges required to be paid based on a binding estimate and the terms of payment under that estimate.

(9) Whether the shipper requests notification of the charges prior to delivery and the telephone number or address at which such communications will be received.

(10) Signatures Required. The order for service shall be signed by the shipper who is ordering the service, and by the carrier or its agent. A copy of the order for service shall be dated and furnished the shipper at the time it is executed.

(b) *Amendments to an order for service.* Prior to loading an order for service may be amended by agreement of both parties.

[46 FR 16219, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981]

§ 1056.6 Receipt or bill of lading.

(a) *Issuance of a receipt or bill of lading.* Every motor common carrier engaged in the transportation of household goods as defined in § 1056.1(b)(1) shall issue a receipt or bill of lading. The bill of lading shall contain the minimum information required by § 1056.6(b) and the terms and conditions of the contract. The carrier shall furnish a complete copy of the bill of lading to the shipper prior to the commencement of the loading of a shipment.

(b) *Minimum information required on a receipt or bill of lading.* Whenever a receipt or bill of lading is issued in compliance with paragraph (a), the carrier shall cause to be included therein the following minimum information:

(1) The name and address of the motor carrier issuing the receipt or bill of lading.

(2) The names and addresses of any other motor carriers, when known, which will participate, through interline, in the transportation of the shipment.

(3) The name, address and telephone number of the office of the carrier that should be contacted in relation to the transportation of shipments.

(4) When the transportation is to be performed on a collect on delivery basis, the name, address and, if furnished, the telephone number of a person to whom notification provided for in § 1056.9(b) shall be given.

(5) When the transportation is to be performed for an individual shipper, and except when the transportation is to be performed subject to tariff provisions providing for guaranteed service dates, the agreed date or period of time for pickup of the shipment and the agreed date or period of time for the delivery of the shipment. The agreed dates or periods of time for pickup and delivery entered on the receipt or bill of lading shall conform to the agreed dates or periods of time for pickup and delivery entered on the order for service or a proper amendment to the order for service.

(6) When the transportation is to be performed subject to tariff provisions providing for guaranteed pickup, transportation and delivery service, the dates for pickup and delivery and any penalty or per diem entitlements due the shipper under the agreement.

(7) The actual date of pickup.

(8) The company or carrier identification number of the vehicle on which the shipment is loaded.

(9) The terms and conditions for payment of the total charges including notice of any minimum charges.

(10) When the transportation is to be performed on a collect on delivery basis and if a pre-move estimate of the charges is provided to the shipper, the maximum amount required to be paid at the time of delivery to obtain delivery of the shipment.

(11) The required released rates valuation statement.

(12) Evidence of any insurance coverage sold to or procured for the shipper, including the amount of the premium for such insurance.

(c) *Copy of receipt or bill of lading to accompany shipment.* A copy of the receipt or bill of lading shall accompany a shipment at all times while in the possession of a carrier. When the shipment is loaded on a vehicle for transportation the receipt or bill of lading shall be in possession of the driver responsible for the shipment.

[46 FR 16219, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981, as amended at 50 FR 37534, Sept. 16, 1985]

§ 1056.7 Determination of weights.

(a) Every motor common carrier transporting household goods on a non-binding estimate shall determine the weight of each shipment transported prior to the assessment of any charges dependent on the shipment weight. Except as otherwise provided herein the weight shall be obtained on a scale meeting the definition of a certified scale as provided in § 1056.1(b)(4).

(1) *Weighing procedure.* Except as otherwise provided herein the weight of each shipment shall be obtained by determining the difference between the tare weight of the vehicle on which the shipment is to be loaded

prior to the loading and the gross weight of the same vehicle after the shipment is loaded; or, the gross weight of the vehicle with the shipment loaded and the tare weight of the same vehicle after the shipment is unloaded.

(2) At the time of both weighings the vehicle shall have installed or loaded all pads, dollies, handtrucks, ramps and other equipment required in the transportation of such shipments. Neither the driver nor any other persons shall be on the vehicle at the time of either weighing.

(3) The fuel tanks on the vehicle shall be full at the time of each weighing or, in the alternative, no fuel may be added between the two weighings when the tare weighing is the first weighing performed.

(4) The trailer of a tractor-trailer vehicle combination may be detached from the tractor and the trailer weighed separately at each weighing providing the length of the scale platform is adequate to accommodate and support the entire trailer at one time.

(5) Shipments weighing 1,000 pounds or less may be weighed on a certified platform or warehouse scale prior to loading for transportation or subsequent to unloading.

(6) The net weight of shipments transported in containers shall be the difference between the tare weight of the container, including all pads, blocking and bracing used or to be used in the transportation of the shipment and the gross weight of the container with the shipment loaded therein.

(7) The shipper or any other person responsible for the payment of the freight charges shall have the right to observe all weighings of the shipment. The carrier must advise the shipper or any other person entitled to observe the weighings of the time and specific location where each weighing will be performed and must give that person a reasonable opportunity to be present to observe the weighings. Waiver by a shipper of the right to observe any weighing or reweighing is permitted and does not affect any rights of the shipper under these regulations or otherwise.

(b) *Weight tickets.* The carrier shall obtain a separate weight ticket for each weighing required under this section except when both weighings are performed on the same scale, one weight ticket may be used to record both weighings. Every weight ticket must be signed by the person performing the weighing and must contain the following minimum information:

(1) The complete name and location of the scale.

(2) The date of each weighing.

(3) Identification of the weight entries thereon as being the tare, gross and/or net weights.

(4) The company or carrier identification of the vehicle.

(5) The last name of the shipper as it appears on the Bill of Lading.

(6) The carrier's shipment registration or Bill of Lading number.

(7) The original weight ticket or tickets relating to the determination of the weight of a shipment must be retained by the carrier as part of the file on the shipment. All freight bills presented to collect any shipment charges dependent on the weight transported must be accompanied by true copies of all weight tickets obtained in the determination of the shipment weight.

(c) *Reweighing of shipments.* Before the actual commencement of the unloading of a shipment weighed at origin and after the shipper is informed of the billing weight and total charges, the shipper may request a reweigh. The charges shall be based on the reweigh weight.

§ 1056.8 Reasonable dispatch.

(a) Unless accepted for transportation on the basis of guaranteed pickup and delivery dates:

(1) *Reasonable dispatch required.* Each motor common carrier accepting shipments of household goods as defined in § 1056.1(b)(1) for transportation for the account of individual shippers shall cause such shipments to be transported with reasonable dispatch as defined in § 1056.1(b)(2).

(2) *Notification of delay in providing service with reasonable dispatch.* Whenever a carrier is unable to perform either or both the pickup and de-

livery of a shipment on the dates or during the periods of time specified in the order for service, the carrier shall notify the shipper by telephone, telegram or in person, at the carrier's expense, of the delay. Such notification shall be given as soon as it becomes apparent to the carrier that it will be unable to provide the service in compliance with the terms of the order for service.

(3) *Carrier notification of delay.* At the time of notification of delay the carrier shall advise the shipper of the dates or periods of time that pickup and/or delivery can be made, which considers the needs of the shipper. If the notification of delay occurs prior to the pickup of the shipment, the amendment shall be in writing as required by § 1056.5(b). If the notification of delay occurs subsequent to the pickup of the shipment, the carrier representative notifying the shipper of the delay shall prepare a written record of the date, time and manner of notification and the amended date or period of time for delivery by the carrier which record shall be retained by the carrier as part of its file on the shipment and a true copy thereof shall be furnished, by first class mail or in person, to the shipper.

(b) *Tendering for delivery.* Except upon the request or concurrence of the shipper, a shipment being transported for an individual shipper shall not be tendered for delivery prior to the agreed delivery date or period of time specified on the bill of lading: *Provided,* That whenever a carrier is able to tender such a shipment for final delivery more than 24 hours prior to such specified date or the first day of such specified period of time, and the shipper has not requested or concurred in such early delivery, the carrier may, at its option, place the shipment in storage for its own account and at its own expense in a warehouse located in proximity to the destination of the shipment. Whenever a carrier shall exercise such option it shall immediately notify the shipper of the name and address of the warehouse in which the shipment has been placed, and shall make and keep a record of such notification as a part of its record of shipment. The carrier's responsibility for the shipment under the terms and conditions of the bill of lading and its responsibility for the charges for redelivery, handling and storage thereof shall continue until final delivery: *Provided,* that the carrier's responsibility under the bill of lading shall not extend beyond the agreed delivery date or the first day of the period within which delivery was to have been accomplished as specified in the bill of lading.

[46 FR 16220, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981]

§ 1056.9 Notification of charges.

(a) Whenever an individual shipper of a shipment being transported on a collect on delivery basis specifically requests notification of the actual weight or volume and charges on a shipment, and supplies the carrier with an address or telephone number at which the communication will be received, the carrier shall comply with such request upon determining the actual weight and charges. Such notification shall be made by telephone, telegram, or in person.

(b) Whenever a shipper requests notification of the weight or volume and charges on a shipment as provided in paragraph (a), the notification must be received by the shipper, at least one full 24-hour day, excluding Saturdays, Sundays and legal holidays, prior to any tender of the shipment for delivery. The 24-hour notification requirement shall not apply on a shipment to be backweighed or on a shipment which, with the agreement of the shipper, is to be picked up and delivered within a time period encompassing two consecutive week days, or on a shipment on which the charges have been estimated and the maximum amount required to be paid at time of delivery is 110 percent of the estimated charges.

§ 1056.10 Signed receipt for shipment-release prohibited.

A shipping document to be signed by the consignee at time of delivery shall not contain any language which purports to release or discharge the carrier or its agents from liability, but may contain a statement that the property has been received in apparent good condition except as noted on the shipping documents.

§ 1056.11 Selling of insurance to shippers.

(a) When a shipment is released for transportation at a value not exceeding 60 cents per pound per article, and the shipper does not declare a valuation of $1.25 or more per pound and pay or agree to pay the carrier for assuming liability for the shipment equal to the declared value, any common carrier of household goods as defined in § 1056.1(b)(1), or any employee, agent, or representative thereof, may sell, or offer to sell or procure for any shipper, any kind of insurance, under any type of policy, covering loss or damage in excess of the specified carrier liability to a shipment or shipments of household goods to be transported in interstate or foreign commerce by such carrier; *Provided*, that the shipper is issued a policy or other appropriate evidence of the insurance purchased, and a copy thereof be furnished to the shipper at the time the insurance is sold or procured. Carrier issued policies shall be written in plain English and shall clearly specify the nature and extent of coverage. Failure to issue a policy or other appropriate evidence of insurance purchased shall subject the carrier to full liability for any claims to recover for loss or damage attributed to the carrier.

(b) Any carrier offering or selling or procuring insurance as provided in paragraph (a) of this section shall provide in its tariff for the provision of such service. The tariff shall also provide for the base transportation charge to include assumption by the carrier for full liability for the value of the shipment in the event a policy or other appropriate evidence of the insurance purchased by the shipper is not issued to the shipper at the time of purchase.

§ 1056.12 Liability of carriers.

(a) *Liability restricted.* Except as provided in § 1056.11(a), common carriers by motor vehicle of household goods as defined in § 1056.1(b)(1) shall not assume any liability in excess of that for which they are legally liable under their lawful bills of lading and published tariffs.

(b) *Limitations of liability.* A common carrier by motor vehicle of household goods shall be liable for loss of or damage to any articles caused by it while being transported or while being held for storage-in-transit, including incidental pickup or delivery, and including liability for loss or damage to any article or appliance resulting from the servicing of such article or appliance by a third person engaged by the carrier to perform such service, to the extent provided in the outstanding released rates order; except that the carrier may exempt its liability in the following instances:

(1) No liability need be assumed for perishable articles included in the shipment without the knowledge of the carrier; and a carrier accepting for shipment perishable articles may impose reasonable conditions necessary to insure the safe transportation of such commodities.

(2) When a shipment is released to a value greater than sixty cents (60¢) per pound, per article, liability for loss or damage may be limited to $100 per pound, per article (based upon the actual article weight), for any article included in the shipment that exceeds $100 per pound, per article in value, unless the shipper specifically notifies the carrier in writing that an identified article or articles with a value greater than $100 per pound will be included in the shipment. In such case, the shipper will be entitled to full recovery up to the declared value of the article or articles, not to exceed the declared value of the entire shipment.

(c) *Storage-in-transit.* A common carrier by motor vehicle of household goods holding goods for storage-in-transit (S.I.T.) shall, no less than 10 days prior to the expiration of either the specified period of time during which the goods are to be held in such storage or the maximum period of time provided in the carrier's tariff for storage-in-transit, notify the shipper in writing (1) of the date of conversion to permanent storage, (2) of the existence of a nine-month period subsequent to the date of conversion to permanent storage during which shipper may file claims against the carrier for loss and/or damage which occurred to the goods in transit or during the S.I.T. period, and, (3) of the fact that on the date of conversion, the liability of the carrier shall terminate and the property shall be subject to the rules, regulations, and charges of the warehouseman. Notification shall be by certified mail, return receipt requested. A common carrier by motor vehicle of household goods holding goods for storage-in-transit for a period of time less than 10 days shall, no less than one day prior to the expiration of the specified time during which the goods are to be held in such storage, give notification to the shipper of the information specified in paragraph (d) (1), (2), and (3) and maintain a record thereof as part of its record of the shipment. Failure or refusal of a carrier to notify the shipper in accordance with the foregoing shall automatically effect a continuance of carrier liability pursuant to the applicable tariff provisions with respect to S.I.T., until the end of the day following the date upon which notice is given.

[46 FR 16218, Mar. 11, 1981, as amended at 55 FR 18729, May 9, 1990; 55 FR 30235, July 25, 1990]

§ 1056.13 Complaint and inquiry handling.

(a) Motor common carriers engaged in the transportation of household goods as defined in § 1056.1(a) shall establish and maintain a procedure for responding to complaints and inquiries from shippers for which such transportation is provided. The procedure shall include a means whereby shippers may communicate with the principal office of the carrier by telephone.

(b) The carrier shall retain and make part of the file relating to a shipment a written record of all complaints and inquiries received from a shipper by any means of communication.

§ 1056.14 Agency agreements.

(a) Household Goods Agents are defined as follows:

(1) Prime agents are defined as all agents who are permitted or required under the terms of any agreement or arrangement with a principal carrier to provide any transportation service for or on behalf of the principal carrier, including the selling of or arranging for any transportation service, and who perform such services on other than an emergency or temporary basis.

(2) Military agents are defined as all agents who are permitted or required under the terms of any agreement or arrangement with a principal carrier to provide origin and/or destination services only on shipments transported on Government bills of lading issued by the Department of Defense, and who perform such services on other than an emergency or temporary basis.

(3) Temporary agents are defined as all agents who are permitted or required under the terms of any agreement or arrangement with a principal carrier to provide origin and/or destination services on behalf of the principal carrier, excluding the selling of or arranging for any transportation service, and who perform such services on an emergency or temporary basis.

(b) Agreements between principal carriers and their prime or military agents must be reduced to writing and signed by the principal and the retained agent, and copies of any such agreements must be in the files of the principal carrier for a period of not less than 24 months following the date of termination of each agreement.

[46 FR 16222, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981]

§ 1056.15 Collection of freight charges on household goods shipments involving loss or destruction in transit.

(a) No motor common carrier of household goods in interstate or foreign commerce shall collect, or shall require a shipper thereof to pay, any published freight charges (including any charges for accessorial or terminal services) when that shipment is totally lost or destroyed in transit. The provisions of this subsection shall apply only to the transportation of household goods as defined in § 1056.1(b)(1) of these rules. Notwithstanding any other provisions of this subsection, a carrier shall collect, and the shipper shall be required to pay, any specific valuation charge that may be due.

This subsection shall not be applicable to the extent that any such loss or destruction is due to the act or omission of the shipper.

(b) In the event that any portion, but less than all, of a shipment of household goods is lost or destroyed in transit, a motor common carrier of household goods in interstate or foreign commerce shall, at the time it disposes of claims for loss, damage, or injury to the articles in the shipment as provided in part 1005 of this chapter, refund that portion of its published freight charges (including any charges for accessorial or terminal services) corresponding to that portion of the shipment which is lost or destroyed in transit. To calculate the charges applicable to the shipment as delivered, the carrier shall multiply the percentage corresponding to the portion of the shipment delivered by the total charges (including accessorial and terminal charges) applicable to the shipment tendered by the shipper. If the charges computed in the manner set forth above exceed the charges otherwise applicable to the shipment as delivered, the lesser of those charges shall apply. The provisions of this paragraph shall apply only to the transportation of household goods as defined in § 1056.1(b)(1) of these rules. Notwithstanding any other provisions of this paragraph, a carrier shall collect, and the shipper shall be required to pay, that proportion of any charges for accessorial or terminal services rendered which corresponds to the proportion of the shipment not lost or destroyed in transit and any specific valuation charge that may be due. The provisions of this paragraph shall not be applicable to the extent that any such loss or destruction is due to the act or omission of the shipper. Carriers shall determine, at their own expense, the proportion of the shipment not lost or destroyed in transit.

(c) The rights provided by this section are in addition to, and not in lieu of, any other rights which the shipper may have with respect to a shipment of household goods which is lost or destroyed, or partially lost or destroyed, in transit, whether or not that shipper has exercised the rights provided in paragraphs (a) and (b) of this section.

[46 FR 16218, Mar. 11, 1981, as amended at 54 FR 36981, Sept. 6, 1989]

§ 1056.16 Collection of freight charges on shipments transported on more than one vehicle.

(a) Whenever a collect on delivery shipment of household goods, as defined in § 1056.1(b)(1), is transported on more than one vehicle the carrier delivering such split or divided shipment shall observe the requirements of paragraphs (a)(1), (2) or (3) of this section in the collection of the charges.

(1) At the option of the carrier, the collection of the charges attributable to the transportation of the portion of the shipment transported on each vehicle may be deferred until all portions of the shipment are delivered; or,

(2) Providing that the charges for the entire shipment have been determined, the carrier may collect at the time of delivery of any portion of the shipment that percentage of the charges represented by the portion of the shipment tendered for delivery; or,

(3) In the event that the charges due the carrier for the transportation of the entire shipment cannot reasonably be determined at the time any portion of the shipment is tendered for delivery, the carrier shall determine and collect the charges for the portion of the shipment being delivered. The total charges assessed by the carrier for the transportation of the separate portions of the shipment shall not exceed the charges due for the entire shipment.

(b) In the event of the loss or destruction of any part of a shipment being transported on more than one vehicle, the collection of charges as provided in paragraph (a) of this section shall also be in conformity with the requirements of § 1056.15.

§ 1056.17 Advertising by motor common carriers of household goods.

(a) Every motor common carrier engaged in the transportation of household goods in interstate or foreign commerce, including any carriers providing any accessorial service incidental to or part of such interstate or foreign transportation, shall include, and shall require each of its agents to include, in every advertisement as defined in § 1056.1(b)(3), the name or trade name of the motor carrier under whose operating authority the advertised service will originate, and the certificate or docket number assigned to such operating authority by the Interstate Commerce Commission.

(b) Such certificate or docket number shall be in the following form in every advertisement: "I.C.C. No.——" but shall not include any sub numbers which may have been assigned.

(c) No motor common carrier engaged in the transportation of household goods, as defined in § 1056.1(b)(1), or any agent or other representative of such a carrier, shall publish or cause to be published or use any advertisement as defined in § 1056.1(b)(3), which is false, misleading or deceptive.

§ 1056.18 Preparation and filing of annual performance report.

(a) Minimum Filing Requirement.—Each motor common carrier for household goods as defined in § 1056.1(b)(1), which delivers 100 or more interstate shipments to individual shippers as defined in § 1056.1(b)(5), during any calendar year shall, on or before March 31 of the following year, cause to be filed with the Office of Consumer Protection, Interstate Commerce Commission, Washington, DC 20423, a report of the service performed during the report year. The report shall be submitted on Form OCP-101.

(b) Prescribed Annual Performance Report Form

INTERSTATE COMMERCE COMMISSION

OFFICE OF CONSUMER PROTECTION

ANNUAL PERFORMANCE REPORT FOR YEAR ENDED DECEMBER 31, 19—

Carrier's Name ——————————

Carrier's Address ——————————

ICC Number ——————————

PART A

During the year the total number of shipments delivered for each type of shipper was:

1. Individual shipper .... ——
2. Government Bill of Lading shipper .... ——
3. Commercial shipper .... ——

PART B

With reference to shipments delivered for individual shippers as defined in § 1056.1(b)(5):

1. The number of shipments delivered upon payment of the amount of a binding estimate (§ 1056.3(a)) .... ——
2. Percent of the shipments on which a non-binding estimate was furnished for which the final charges for the services included in the estimate did not exceed the amount of the estimate .... ——
3. Percent of shipments delivered which were picked up on or before the last date for pickup specified in the order for service/bill of lading .... ——
4. Percent of shipments delivered which were delivered on or before the last date for delivery as specified in the bill of lading contract .... ——
5. Percent of shipments delivered which did not result in the filing of a claim by the shipper within 60 days following the date of delivery for property loss or damage in excess of $100 .... ——
6. Percent of shipments delivered which did not result in the filing of a claim in excess of $100 by the shipper within 60 days following the date of delivery for damages and expenses arising out of the delayed pickup or delivery of the shipment .... ——
7. The average number of days between the date of filing of a claim for property loss or damage or delay in excess of $100 and the date of final settlement of such a claim .... ——
8. The percent of all claims for amounts in excess of $100 filed for property loss or damage or for damages or expenses incurred as result of delayed pickup or delivery .... ——
    a. Which were resolved through the use of a dispute settlement (arbitration) program maintained or participated in by the carrier .... ——
    b. Which were not referred to a dispute settlement program and which were concluded after the carrier received legal notice of suit by claimant to recover .... ——

(c) Instructions for Preparation of Annual Performance Report, Form OCP-101

INSTRUCTIONS FOR PREPARATION

PART A

1. Enter the total number of shipments delivered which were transported for individual shippers.

2. Enter the total number of shipments delivered on Government Bills of Lading. Do not include shipments transported for a freight forwarder.

3. Enter the total number of shipments transported for commerical shippers as de-

fined in § 1056.1(b)(6). Include shipments transported for freight forwarders in this total.

PART B

1. Enter the number of shipments delivered on which a binding estimate was furnished on which the final charges were the same as the binding estimate.

2. Enter the percent of the shipments on which a non-binding estimate of costs was furnished which were delivered upon payment of an amount not exceeding the non-binding estimate.

3. Enter the percent of the shipments entered under part A item 1 which were picked up on or before the last date for pickup as specified in the order for service. *Include in the computation of the percent all shipments picked up late, regardless of the reason or the party responsible for the delay.*

4. Enter the percent of all shipments entered under part A item 1 which were delivered on or before the last date for delivered as specified in the bill of lading. *Include in the computation of the percent all shipments delivered late regardless of the reason or the party responsible for the delay.*

5. Enter the percent of the shipments entered under part A item 1 which did not result in the filing of a claim by the shipper within 60 days following the date of delivery for property loss or damage in excess of $100. For the purposes of this report, a "claim filed" shall be considered as any claim otherwise meeting the minimum requirements of § 1005.2(b) and for an apparent loss in excess of $100.

6. Enter the percent of shipments entered under part A item 1 which did not result in the filing of a claim by the shipper within 60 days following the date of delivery for damages or expenses in excess of $100 incurred as a result of the delayed pickup and/or delivery of the shipment. For the purposes of this report, a "claim filed" shall be considered as any claim otherwise meeting the minimum requirements of § 1005.2(b) and for apparent damages or expenses in excess of $100.

7. Enter the average number of days required to reach a final settlement of all claims for $100 or more relating to the transportation of shipments entered under Part A item 1 arising out of property loss or damage or the delayed pickup and/or delivery of shipments during the report year. For the purpose of this report a claim shall be considered to be a "claim filed" if it meets the criteria set forth in (5) and (6) and shall be considered as being finally settled on the 60th day following the date on which a written offer of settlement is mailed or delivered in person to a claimant unless the offer of settlement is accepted prior to the 60th day or, on the 60th day following the date on which a written denial of liability is mailed or delivered in person to the claimant unless the claimant assents to the denial prior to the 60th day.

8a. Enter the percent of the loss and damage or delay claims for $100 or more arising out of the transportation of shipments entered under Part A item 1 which were settled during the report year through the use of a dispute resolution or arbitration procedure maintained or participated in by the carrier.

8b. Enter the percent of loss and damage or delay claims for $100 or more arising out of the transportation of shipments entered under Part A item 1 which were settled during the year on a date subsequent to the date of which legal notice of suit to recover was received by the carrier.

GENERAL INSTRUCTIONS

1. Data for completion of Form OCP-101 may be obtained by random sampling providing that in every instance the universe sampled is all shipments delivered for individual shippers during the report year or all claims arising out of the transportation of individual shipper shipments which were received or settled, as appropriate, during the report year.

2. When random sampling is used, the minimum sample size in every instance shall be 400 shipments or claims, as appropriate, in replicates of 100 shipments or claims each. All samples must conform to standard deviation with a 95% confidence level.

3. Carriers submitting Form OCP-101 shall retain and make available for review by an authorized Commission employee all working papers, notes and other files relating to the preparation of each report for a period of not less than 24 months following the date of filing such a report.

[46 FR 16223, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981]

§ 1056.19 Use of charge card plans.

Motor common carriers of household goods, as defined in 49 CFR 1056(b)(1), may provide in their tariffs for the acceptance of charge cards for the payment of freight charges whenever shipments are transported under agreements and tariffs requiring payment by cash, certified check or money order. Payment by charge card shall be considered the same as payment by cash, certified check or money order. Any tariff rule or item permitting the acceptance of charge cards shall identify the charge card plans participated in by the carrier.

PART 1057—LEASE AND INTERCHANGE OF VEHICLES

Subpart A—General Applicability and Definitions

Sec.
1057.1 Applicability.
1057.2 Definitions.

Subpart B—Leasing Regulations

1057.11 General leasing requirements.
1057.12 Written lease requirements.

Subpart C—Exemptions for the Leasing Regulations

1057.21 General exemptions.
1057.22 Exemption for private carrier leasing and leasing between authorized carriers.
1057.26 Exemption for leases between authorized carriers and their agents.

Subpart D—Interchange Regulations

1057.31 Interchange of equipment.

Subpart E—Private Carriers and Shippers

1057.42 Lease of equipment by regulated carriers.

AUTHORITY: 49 U.S.C. 11107 and 10321; 5 U.S.C. 553.

SOURCE: 44 FR 4681, Jan. 23, 1979, unless otherwise noted.

Subpart A—General Applicability and Definitions

§ 1057.1 Applicability.

The regulations in this part apply to the following actions by motor carriers holding permanent or temporary operating authority from the Commission to transport property:

(a) The leasing of equipment with which to perform transportation regulated by the Commission.

(b) The leasing of equipment to motor private carrier or shippers.

(c) The interchange of equipment between motor common carriers in the performance of transportation regulated by the Commission.

§ 1057.2 Definitions.

(a) *Authorized carrier*—A person or persons authorized to engage in the transportation of property as a common or contract carrier under the provisions of 49 U.S.C. 10921, 10922, 10923, 10928, 10931, or 10932.

(b) *Equipment*—A motor vehicle, straight truck, tractor, semitrailer, full trailer, any combination of these and any other type of equipment used by authorized carriers in the transportation of property for hire.

(c) *Interchange*—The receipt of equipment by one motor common carrier of property from another such carrier, at a point which both carriers are authorized to serve, with which to continue a through movement.

(d) *Owner*—A person (1) to whom title to equipment has been issued, or (2) who, without title, has the right to exclusive use of equipment, or (3) who has lawful possession of equipment registered and licensed in any State in the name of that person.

(e) *Lease*—A contract or arrangement in which the owner grants the use of equipment, with or without driver, for a specified period to an authorized carrier for use in the regulated transportation of property, in exchange for compensation.

(f) *Lessor*—In a lease, the party granting the use of equipment, with or without driver, to another.

(g) *Lessee*—In a lease, the party acquiring the use of equipment with or without driver, from another.

(h) *Sublease*—A written contract in which the lessee grants the use of leased equipment, with or without driver, to another.

(i) *Addendum*—A supplement to an existing lease which is not effective until signed by the lessor and lessee.

(j) *Private carrier*—A person, other than a motor carrier, transporting property by motor vehicle in interstate or foreign commerce when (1) the person is the owner, lessee, or bailee of the property being transported; and (2) the property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise.

(k) *Shipper*—A person who sends or receives property which is transported in interstate or foreign commerce.

(l) *Escrow fund*—Money deposited by the lessor with either a third party or the lessee to guarantee performance, to repay advances, to cover repair expenses, to handle claims, to handle license and State permit costs, and for any other purposes mutually agreed upon by the lessor and lessee.

(m) *Detention*—The holding by a consignor or consignee of a trailer, with or without power unit and driver, beyond the free time allocated for the shipment, under circumstances not attributable to the performance of the carrier.

[44 FR 4681, Jan. 23, 1979, as amended at 49 FR 47850, Dec. 7, 1984]

Subpart B—Leasing Regulations

§ 1057.11 General leasing requirements.

Other than through the interchange of equipment as set forth in § 1057.31, and under the exemptions set forth in subpart C of these regulations, the authorized carrier may perform authorized transportation in equipment it does not own only under the following conditions:

(a) *Lease*—There shall be a written lease granting the use of the equipment and meeting the requirements contained in § 1057.12.

(b) *Receipts for equipment*—Receipts, specifically identifying the equipment to be leased and stating the date and time of day possession is transferred, shall be given as follows:

(1) When possession of the equipment is taken by the authorized carrier, it shall give the owner of the equipment a receipt. The receipt identified in this section may be transmitted by mail, telegraph, or other similar means of communication.

(2) When possession of the equipment by the authorized carrier ends, a receipt shall be given in accordance with the terms of the lease agreement if the lease agreement requires a receipt.

(3) Authorized representatives of the carrier and the owner may take possession of leased equipment and give and receive the receipts required under this subsection.

(c) *Identification of equipment*—The authorized carrier acquiring the use of equipment under this section shall identify the equipment as being in its service as follows:

(1) During the period of the lease, the carrier shall identify the equipment in accordance with the Commission's requirements in part 1058 of this chapter (Identification of Vehicles).

(2) Unless a copy of the lease is carried on the equipment, the authorized carrier shall keep a statement with the equipment during the period of the lease certifying that the equipment is being operated by it. The statement shall also specify the name of the owner, the date and length of the lease, any restrictions in the lease relative to the commodities to be transported, and the address at which the original lease is kept by the authorized carrier. This statement shall be prepared by the authorized carrier or its authorized representative.

(d) *Records of equipment*—The authorized carrier using equipment leased under this section shall keep records of the equipment as follows:

(1) The authorized carrier shall prepare and keep documents covering each trip for which the equipment is used in its service. These documents shall contain the name and address of the owner of the equipment, the point of origin, the time and date of departure, and the point of final destination. Also, the authorized carrier shall carry papers with the leased equipment during its operation containing this information and identifying the lading and clearly indicating that the transportation is under its responsibility. These papers shall be preserved by the authorized carrier as part of its transportation records. Leases which contain the information required by the provisions in this paragraph may be used and retained instead of such documents or papers. As to lease agreements negotiated under a master lease, this provision is complied with by having a copy of a master lease in the unit of equipment in question and where the balance of documentation called for by this paragraph is included in the freight documents prepared for the specific movement.

(2) [Reserved]

[44 FR 4681, Jan. 23, 1979, as amended at 49 FR 47269, Dec. 3, 1984; 49 FR 47850, Dec. 7, 1984; 50 FR 24649, June 12, 1985; 51 FR 37406, Oct. 22, 1986]

§ 1057.12 Written lease requirements.

Except as provided in the exemptions set forth in subpart C of this part, the written lease required under § 1057.11(a) shall contain the following provisions. The required lease provisions shall be adhered to and performed by the authorized carrier.

(a) *Parties*—The lease shall be made between the authorized carrier and the owner of the equipment. The lease shall be signed by these parties or by their authorized representatives.

(b) *Duration to be specific*—The lease shall specify the time and date or the circumstances on which the lease begins and ends. These times or circumstances shall coincide with the times for the giving of receipts required by § 1057.11(b).

(c) *Exclusive possession and responsibilities*—(1) The lease shall provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease.

(2) Provision may be made in the lease for considering the authorized carrier lessee as the owner of the equipment for the purpose of subleasing it under these regulations to other authorized carriers during the lease.

(3) When an authorized carrier of household goods leases equipment for the transportation of household goods, as defined by the Commission, the parties may provide in the lease that the provisions required by paragraph (c)(1) of this section apply only during the time the equipment is operated by or for the authorized carrier lessee.

(d) *Compensation to be specified*—The amount to be paid by the authorized carrier for equipment and driver's services shall be clearly stated on the face of the lease or in an addendum which is attached to the lease. Such lease or addendum shall be delivered to the lessor prior to the commencement of any trip in the service of the authorized carrier. An authorized representative of the lessor may accept these documents. The amount to be paid may be expressed as a percentage of gross revenue, a flat rate per mile, a variable rate depending on the direction traveled or the type of commodity transported, or by any other method of compensation mutually agreed upon by the parties to the lease. The compensation stated on the lease or in the attached addendum may apply to equipment and driver's services either separately or as a combined amount.

(e) *Items specified in lease.* The lease shall clearly specify which party is responsible for removing identification devices from the equipment upon the termination of the lease and when and how these devices, other than those painted directly on the equipment, will be returned to the carrier. The lease shall clearly specify the manner in which a receipt will be given to the authorized carrier by the equipment owner when the latter retakes possession of the equipment upon termination of the lease agreement, if a receipt is required at all by the lease. The lease shall clearly specify the responsibility of each party with respect to the cost of fuel, fuel taxes, empty mileage, permits of all types, tolls, ferries, detention and accessorial services, base plates and licenses, and any unused portions of such items. The lease shall clearly specify who is responsible for loading and unloading the property onto and from the motor vehicle, and the compensation, if any, to be paid for this service. Except when the violation results from the acts or omissions of the lessor, the authorized carrier lessee shall assume the risks and costs of fines for overweight and oversize trailers when the trailers are pre-loaded, sealed, or the load is containerized, or when the trailer or lading is otherwise outside of the lessor's control, and for improperly permitted overdimension and overweight loads and shall reimburse the lessor for any fines paid by the lessor. If the authorized carrier is authorized to receive a refund or a credit for base plates purchased by the lessor from, and issued in the name of, the authorized carrier, or if the base plates are authorized to be sold by the authorized carrier to another lessor the authorized carrier shall refund to the initial lessor on whose behalf the base plate was first obtained a prorated share of the amount received.

(f) *Payment period.* The lease shall specify that payment to the lessor shall be made within 15 days after submission of the necessary delivery documents and other paperwork concerning a trip in the service of the authorized carrier. The paperwork required before the lessor can receive payment is limited to log books required by the Department of Transportation and those documents necessary for the authorized carrier to secure payment from the shipper. In addition, the lease may provide that, upon termination of the lease agreement, as a condition precedent to payment, the lessor shall remove all identification devices of the authorized carrier and, except in the case of identification painted directly on equipment, return them to the carrier. If the identification device has been lost or stolen, a letter certifying its removal will satisfy this requirement. Until this requirement is complied with, the carrier may withhold final payment. The authorized carrier may require the submission of additional documents by the lessor but not as a prerequisite to payment. Payment to the lessor shall not be made contingent upon submission of a bill of lading to which no exceptions have been taken. The authorized carrier shall not set time limits for the submission by the lessor of required delivery documents and other paperwork.

(g) *Copies of freight bill or other form of freight documentation.* When a lessor's revenue is based on a percentage of the gross revenue for a shipment, the lease must specify that the authorized carrier will give the lessor, before or at the time of settlement, a copy of the rated freight bill or a computer-generated document containing the same information, or, in the case of contract carriers, any other form of documentation actually used for a shipment containing the same information that would appear on a rated freight bill. When a computer-generated document is provided, the lease will permit lessor to view, during normal business hours, a copy of any actual document underlying the computer-generated document. Regardless of the method of compensation, the lease must permit lessor to examine copies of the carrier's tariff or, in the case of contract carriers, other documents from which rates and charges are computed, provided that where rates and charges are computed from a contract of a contract carrier, only those portions of the contract containing the same information that would appear on a rated freight bill need be disclosed. The authorized carrier may delete the names of shippers and consignees shown on the freight bill or other form of documentation.

(h) *Charge-back items.* The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge.

(i) *Products, equipment, or services from authorized carrier*—The lease shall specify that the lessor is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease arrangement. The lease shall specify the terms of any agreement in which the lessor is a party to an equipment purchase or rental contract which gives the authorized carrier the right to make deductions from the lessor's compensation for purchase or rental payments.

(j) *Insurance*—(1) The lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public pursuant to Commission regulations under 49 U.S.C. 10927. The lease shall further specify who is responsible for providing any other insurance coverage for the operation of the leased equipment, such as bobtail insurance. If the authorized carrier will make a charge back to the lessor for any of this insurance, the lease shall specify the amount which will be charged-back to the lessor.

(2) If the lessor purchases any insurance coverage for the operation of the leased equipment from or through the authorized carrier, the lease shall

specify that the authorized carrier will provide the lessor with a copy of each policy upon the request of the lessor. Also, where the lessor purchases such insurance in this manner, the lease shall specify that the authorized carrier will provide the lessor with a certificate of insurance for each such policy. Each certificate of insurance shall include the name of the insurer, the policy number, the effective dates of the policy, the amounts and types of coverage, the cost to the lessor for each type of coverage, and the deductible amount for each type of coverage for which the lessor may be liable.

(3) The lease shall clearly specify the conditions under which deductions for cargo or property damage may be made from the lessor's settlements. The lease shall further specify that the authorized carrier must provide the lessor with a written explanation and itemization of any deductions for cargo or property damage made from any compensation of money owed to the lessor. The written explanation and itemization must be delivered to the lessor before any deductions are made.

(k) *Escrow funds*—If escrow funds are required, the lease shall specify:

(1) The amount of any escrow fund or performance bond required to be paid by the lessor to the authorized carrier or to a third party.

(2) The specific items to which the escrow fund can be applied.

(3) That while the escrow fund is under the control of the authorized carrier, the authorized carrier shall provide an accounting to the lessor of any transactions involving such fund. The carrier shall perform this accounting in one of the following ways:

(i) By clearly indicating in individual settlement sheets the amount and description of any deduction or addition made to the escrow fund; or

(ii) By providing a separate accounting to the lessor of any transactions involving the escrow fund. This separate accounting shall be done on a monthly basis.

(4) The right of the lessor to demand to have an accounting for transactions involving the escrow fund at any time.

(5) That while the escrow fund is under the control of the carrier, the carrier shall pay interest on the escrow fund on at least a quarterly basis. For purposes of calculating the balance of the escrow fund on which interest must be paid, the carrier may deduct a sum equal to the average advance made to the individual lessor during the period of time for which interest is paid. The interest rate shall be established on the date the interest period begins and shall be at least equal to the average yield or equivalent coupon issue yield on 91-day, 13-week Treasury bills as established in the weekly auction by the Department of Treasury.

(6) The conditions the lessor must fulfill in order to have the escrow fund returned. At the time of the return of the escrow fund, the authorized carrier may deduct monies for those obligations incurred by the lessor which have been previously specified in the lease, and shall provide a final accounting to the lessor or all such final deductions made to the escrow fund. The lease shall further specify that in no event shall the escrow fund be returned later than 45 days from the date of termination.

(l) *Copies of the lease.*—An original and two copies of each lease shall be signed by the parties. The authorized carrier shall keep the original and shall place a copy of the lease on the equipment during the period of the lease unless a statement as provided for in § 1057.11(c)(2) is carried on the equipment instead. The owner of the equipment shall keep the other copy of the lease.

(m) This paragraph applies to owners who are not agents but whose equipment is used by an agent of an authorized carrier in providing transportation on behalf of that authorized carrier. In this situation, the authorized carrier is obligated to ensure that these owners receive all the rights and benefits due an owner under the leasing regulations, especially those set forth in paragraphs (d)–(k) of this section. This is true regardless of whether the lease for the equipment is directly between the authorized carrier and its agent rather than directly between the authorized carrier and each of these owners. The lease between an authorized carrier and its agent shall specify this obligation.

[44 FR 4681, Jan. 23, 1979, as amended at 45 FR 13092, Feb. 28, 1980; 47 FR 28398, June 30, 1982; 47 FR 51140, Nov. 12, 1982; 47 FR 54083, Dec. 1, 1982; 49 FR 47851, Dec. 7, 1984; 51 FR 37406, 37407, Oct. 22, 1986; 52 FR 2412, Jan. 22, 1987]

Subpart C—Exemptions for the Leasing Regulations

§ 1057.21 General exemptions.

Except for § 1057.11(c) which requires the identification of equipment, the leasing regulations in this part shall not apply to:

(a) Equipment used in substituted motor-for-rail transportation of railroad freight moving between points that are railroad stations and on railroad billing.

(b) Equipment used in transportation performed exclusively within any commercial zone as defined by the Commission.

(c) Equipment leased without drivers from a person who is principally engaged in such a business.

(d) Any type of trailer not drawn by a power unit leased from the same lessor.

§ 1057.22 Exemption for private carrier leasing and leasing between authorized carriers.

Regardless of the leasing regulations set forth in this part, an authorized carrier may lease equipment to or from another authorized carrier, or a private carrier may lease equipment to an authorized carrier under the following conditions:

(a) The identification of equipment requirements in § 1057.11 (c) must be complied with;

(b) The lessor must own the equipment or hold it under a lease;

(c) There must be a written agreement between the authorized carriers or between the private carrier and authorized carrier, as the case may be, concerning the equipment as follows:

(1) It must be signed by the parties or their authorized representatives.

(2) It must provide that control and responsibility for the operation of the equipment shall be that of the lessee from the time possession is taken by the lessee and the receipt required under § 1057.11(b) is given to the lessor until: (i) Possession of the equipment is returned to the lessor and the receipt required under § 1057.11(b) is received by the authorized carrier; or (ii) in the event that the agreement is between authorized carriers, possession of the equipment is returned to the lessor or given to another authorized carrier in an interchange of equipment.

(3) A copy of the agreement must be carried in the equipment while it is in the possession of the lessee.

(4) Nothing in this section shall prohibit the use, by authorized carriers, private carriers, and all other entities conducting lease operations pursuant to this section, of a master lease if a copy of that master lease is carried in the equipment while it is in the possession of the lessee, and if the master lease complies with the provisions of this section and receipts are exchanged in accordance with § 1057.11(b), and if records of the equipment are prepared and maintained in accordance with § 1057.11(d).

[49 FR 9570, Mar. 14, 1984, as amended at 49 FR 47269, Dec. 3, 1984; 49 FR 47851, Dec. 7, 1984]

§ 1057.26 Exemption for leases between authorized carriers and their agents.

The leasing regulations set forth in § 1057.12(e) through (l) do not apply to leases between authorized carriers and their agents.

[47 FR 28398, June 30, 1982]

Subpart D—Interchange Regulations

§ 1057.31 Interchange of equipment.

Authorized common carriers may interchange equipment under the following conditions:

(a) *Interchange agreement*—There shall be a written contract, lease, or other arrangement providing for the interchange and specifically describing the equipment to be interchanged. This written agreement shall set forth the specific points of interchange, how the equipment is to be used, and the compensation for such use. The interchange agreement shall be signed by the parties or by their authorized representatives.

(b) *Operating authority*—The carriers participating in the interchange shall hold certificates of public convenience and necessity which authorize the transportation of the commodities at the point where the physical exchange occurs.

(c) *Through bills of lading*—The traffic transported in interchange service must move on through bills of lading issued by the originating carrier. The rates charged and the revenues collected must be accounted for in the same manner as if there had been no interchange. Charges for the use of the interchanged equipment shall be kept separate from divisions of the joint rates or the proportions of such rates accruing to the carriers by the application of local or proportional rates.

(d) *Identification of equipment*—The authorized common carrier receiving the equipment shall identify equipment operated by it in interchange service as follows:

(1) The authorized common carrier shall identify power units in accordance with the Commission's requirements in part 1058 of this chapter (Identification of Vehicles). Before giving up possession of the equipment, the carrier shall remove all identification showing it as the operating carrier.

(2) Unless a copy of the interchange agreement is carried on the equipment, the authorized common carrier shall carry a statement with each vehicle during interchange service certifying that it is operating the equipment. The statement shall also identify the equipment by company or State registration number and shall show the specific point of interchange, the date and time it assumes responsibility for the equipment, and the use to be made of the equipment. This statement shall be signed by the parties to the interchange agreement or their authorized representatives. The requirements of this paragraph shall not apply where the equipment to be operated in interchange service consists only of trailers or semitrailers.

(e) *Connecting carriers considered as owner*—An authorized carrier receiving equipment in connection with a through movement shall be considered to the owner of the equipment for the purpose of leasing the equipment to other authorized carriers in furtherance of the movement to destination or the return of the equipment after the movement is completed.

Subpart E—Private Carriers and Shippers

§ 1057.42 Lease of equipment by regulated carriers.

Authorized carriers may lease equipment and drivers from private carriers, for periods of less than 30 days, in the manner set forth in § 1057.22.

[49 FR 9570, Mar. 14, 1984, as amended at 51 FR 37034, Oct. 17, 1986]

PART 1058—IDENTIFICATION OF VEHICLES

Sec.
1058.1 Applicability.
1058.2 Method of identification.
1058.3 Size, shape, and color.
1058.4 Driveaway service.

AUTHORITY: 49 U.S.C. 10922, 10530, and 11106; 5 U.S.C. 553.

SOURCE: 55 FR 11199, Mar. 27, 1990, unless otherwise noted.

§ 1058.1 Applicability.

These rules govern all for-hire motor carriers except those providing:

(a) Joint, through, regular-route passenger service under continuing lease or interchange arrangements, if the vehicle owner's name and "MC" number are displayed as prescribed at § 1058.2, and if the carriers have filed with the Commission's appropriate Regional Director(s) and posted in each terminal and ticket agency on the involved routes a published schedule showing the points between which each joint carrier assumes control and responsibility for the vehicle's operation; and

(b) Nonscheduled, charter, luxury-type passenger service using limousine-type vehicles with a capacity of six or fewer passengers.

§ 1058.2 Method of identification.

Each vehicle operated under its own power shall display on both sides the name (or trade name) and "MC" number(s) of the carrier under whose authority the vehicle is being operated. The "MC" number(s) shall be in the following form: "I.C.C. MC-__________" but shall not include any sub numbers. The name of any other person operating the vehicle shall appear on the vehicle following the words "operated by" in addition to the other information required by this section. Additional identification may be displayed if consistent with these rules.

§ 1058.3 Size, shape, and color.

The name(s) and number(s) prescribed above shall be displayed, by removable device if desired, in letters and figures in sharp color contrast to their background, and they shall be of a size, shape, and color readily legible in daylight from a distance of 50 feet while the vehicle is stationary.

§ 1058.4 Driveaway service.

In driveaway service, a removable device may be affixed on both sides or at the rear of the single driven vehicle. In a combination driveaway operation, the device may be affixed on both sides of any one unit or at the rear of the last unit.

PART 1061—LIMITATION OF SMOKING ON INTERSTATE BUSES

AUTHORITY: 49 U.S.C. 10521, 11101, and 11701.

§ 1061.1 Separate seating for smokers and nonsmokers.

(a) If otherwise permitted by law, motor common carriers of passengers may permit smoking of cigars, cigarettes, or pipes only in a smoking section, consisting of seats in the rear of the vehicle up to 30 percent of its capacity. This section does not apply to passenger carriers conducting charter operations.

(b) In unusual circumstances, the driver of the vehicle (or other carrier personnel) may make reasonable, minor modifications to assure passengers' comfort and safe, adequate, and expeditious transportation service.

[55 FR 11199, Mar. 27, 1990]

PART 1063—ADEQUACY OF INTERCITY MOTOR COMMON CARRIER PASSENGER SERVICE

Sec.
1063.1 Applicability.
1063.2 Definitions.
1063.3 Ticketing and information.
1063.4 Baggage service.
1063.5 Terminal facilities.
1063.6 Service responsibility.
1063.7 Equipment.
1063.8 Accommodations for handicapped, disabled, blind, and elderly.
1063.9 Identification—bus and driver.
1063.10 Relief from provisions.

AUTHORITY: 49 U.S.C. 10102, 10321, 10701, 10702-10705, 10708, 10721, 10722, 10724, 10730, 10741, 10761, 10762, 10764, 10922, 11101, 11141-11145, 11701, 11702, 11707, 11708, 11901, 11904, 11906, 11909, 11910, and 11914; 5 U.S.C. 553 and 559.

SOURCE: 55 FR 11199, Mar. 27, 1990, unless otherwise noted.

§ 1063.1 Applicability.

These rules govern only motor passenger common carriers conducting regular-route operations.

§ 1063.2 Definitions.

(a) *Carrier* means a motor passenger common carriers.

(b) *Bus* means a passenger-carrying vehicle, regardless of design or seating capacity, used in a carrier's authorized operations.

(c) *Facility* means any structure provided by or for a carrier at or near which buses pick up or discharge passengers.

(d) *Terminal* means a facility operated or used by a carrier chiefly to furnish passengers transportation services and accommodations.

(e) *Station* means a facility, other than a terminal, operated by or for a carrier to accommodate passengers.

(f) *Service* means passenger transportation by bus between authorized points or over authorized routes.

(g) *Commuter service,* notwithstanding 49 CFR 1312.1(b)(33), means passenger transportation wholly between points not more than 100 airline miles apart and not involving through-bus, connecting, or interline services to or from points beyond 100 airline miles. The usual characteristics of commuter service include reduced fare, multiple-ride, and commutation tickets, and peak morning and evening operations.

(h) *Baggage* means property a passenger takes with him for his personal use or convenience.

(i) *Restroom* means a room in a bus or terminal equipped with a toilet, washbowl, soap or a reasonable alternative, mirror, wastebasket, and toilet paper.

§ 1063.3 Ticketing and information.

(a) *Information service.* (1) During business hours at each terminal or station, information shall be provided as to schedules, tickets, fares, baggage, and other carrier services.

(2) Carrier agents and personnel who sell or offer to sell tickets, or who provide information concerning tickets and carrier services, shall be competent and adequately informed.

(b) *Telephone information service.* Every facility where tickets are sold shall provide telephonic information to the traveling public, including current bus schedules and fare information, when open for ticket sales.

(c) *Schedules.* Printed, regular-route schedules shall be provided to the traveling public at all facilities where tickets for such services are sold. Each schedule shall show the points along the carrier's route(s) where facilities are located or where the bus trips originate or terminate, and each schedule shall indicate the arrival or departure time for each such point.

(d) *Ticket refunds.* Each carrier shall refund unused tickets upon request, consistent with its governing tariff, at each place where tickets are sold, within 30 days after the request.

(e) *Announcements.* No scheduled bus (except in commuter service) shall depart from a terminal or station until a public announcement of the departure and boarding point has been given. The announcement shall be given at least 5 minutes before the initial departure and before departures from points where the bus is scheduled to stop for more than 5 minutes.

§ 1063.4 Baggage service.

(a) *Checking procedures.* (1) Carriers shall issue receipts, which may be in the form of preprinted tickets, for all checked services baggage.

(2)(i) If baggage checking service is not provided at the side of the bus, all baggage checked at a baggage checking counter at least 30 minutes but not more than 1 hour before departure shall be transported on the same schedule as the ticketed passenger.

(ii) If baggage checking service is provided at the side of the bus, passengers checking baggage at the baggage checking counter less than 30 minutes before the scheduled departure shall be notified that their baggage may not travel on the same schedule. Such baggage must then be placed on the next available bus to its destination. All baggage checked at the side of the bus during boarding, or at alternative locations provided for such purpose, shall be transported on the same schedule as the ticketed passenger.

(b) *Baggage security.* All checked baggage shall be placed in a secure or attended area prohibited to the public. Baggage being readied for loading shall not be left unattended.

(c) *Baggage liability.* (1) No carrier may totally exempt its liability for articles offered as checked baggage, unless those articles have been exempted by the Commission. (Other liability is subject to 49 CFR part 1064). A notice listing exempted articles shall be prominently posted at every location where baggage is accepted for checking.

(2) Carriers may refuse to accept as checked baggage and, if unknowingly accepted, may disclaim liability for loss or damage to the following articles:

(i) Articles whose transportation as checked baggage is prohibited by law or regulation;

(ii) Fragile or perishable articles, articles whose dimensions exceed the size limitations in the carrier's tariff, receptacles with articles attached or protruding, guns, and materials that have a disagreeable odor;

(iii) Money; and

(iv) Those other articles that the Commission exempts upon petition by the carrier.

(3) Carriers need not offer excess value coverage on articles of extraordinary value (including, but not limited to, negotiable instruments, papers, manuscripts, irreplaceable publications, documents, jewelry, and watches).

(d) *Express shipments.* Passengers and their baggage always take precedence over express shipments.

(e) *Baggage at destination.* All checked baggage shall be made available to the passenger within a reasonable time, not to exceed 30 minutes, after arrival at the passenger's destination. If not, the carrier shall deliver the baggage to the passenger's local address at the carrier's expense.

(f) *Lost or delayed baggage.* (1) Checked baggage that cannot be located within 1 hour after the arrival of the bus upon which it was supposed to be transported shall be designated as lost. The carrier shall notify the passenger at that time and furnish him with an appropriate tracing form.

(2) Every carrier shall make available at each ticket window and baggage counter a single form suitable both for tracing and for filing claims for lost or misplaced baggage. The form shall be prepared in duplicate and signed by the passenger and carrier representative. The carrier or its agent shall receive the signed original, with any necessary documentation and additional information, and the claim check, for which a receipt shall be given. The passenger shall retain the duplicate copy.

(3) The carrier shall make immediate and diligent efforts to recover lost baggage.

(4) A passenger may fill out a tracing form for lost unchecked baggage. The carrier shall forward recovered unchecked baggage to the terminal or station nearest the address shown on the tracing form and shall notify the passenger that the baggage will be held on a will-call basis.

(g) *Settlement of claims.* Notwithstanding 49 CFR 1005.5, if lost checked baggage cannot be located within 15 days, the carrier shall immediately process the matter as a claim. The date on which the carrier or its agent received the tracing form shall be considered the first day of a 60-day period in which a claim must be resolved by a firm offer of settlement or by a written explanation of denial of the claim.

§ 1063.5 Terminal facilities.

(a) *Passenger security.* All terminals and stations must provide adequate security for passengers and their attendants and be regularly patrolled.

(b) *Outside facilities.* At terminals and stations that are closed when buses are scheduled to arrive or depart, there shall be available, to the extent possible, a public telephone, outside lighting, posted schedule information, overhead shelter, information on local accommodations, and telephone numbers for local taxi service and police.

(c) *Maintenance.* Terminals shall be clean.

§ 1063.6 Service responsibility.

(a) *Schedules.* Carriers shall establish schedules that can be reasonably met, including connections at junction points, to serve adequately all authorized points.

(b) *Continuity of service.* No carrier shall change an existing regular-route schedule without first filing a written notice with the Commission's appropriate Regional Office(s). The carrier shall display conspicuously a copy of such notice in each facility and on each bus affected. Such notice shall be displayed for a reasonable time before it becomes effective and shall contain the carrier's name, a description of the proposed schedule change, the effective date thereof, the reasons for the change, the availability of alternate service, and the name and address of the carrier representative passengers may contact.

(c) *Trip interruptions.* A carrier shall mitigate, to the extent possible, any passenger inconvenience it causes by disrupting travel plans.

(d) *Seating and reservations.* A carrier shall provide sufficient buses to meet passengers' normal travel demands, including ordinary weekend and usual seasonal or holiday demand. Passengers (except commuters) shall be guaranteed, to the extent possible, passage and seating.

(e) *Inspection of rest stops.* Each carrier shall inspect periodically all rest stops it uses to ensure that they are clean.

§ 1063.7 Equipment.

(a) *Temperature control.* A carrier shall maintain a reasonable temperature on each bus (except in commuter service).

(b) *Restrooms.* Each bus (except in commuter service) seating more than 14 passengers (not including the driver) shall have a clean, regularly maintained restroom, free of offensive odor. A bus may be operated without a restroom if it makes reasonable rest stops.

(c) *Bus servicing.* Each bus shall be kept clean, with all required items in good working order.

§ 1063.8 Accommodations for handicapped, disabled, blind, and elderly.

(a) *Transportation.* No carrier shall deny transportation to any person on the basis of a handicap, physical disability, or blindness, or because that person cannot board a bus without assistance. A guide dog shall be provided free passage when accompanied by a blind person.

(b) *Assistance.* All carriers, whenever possible and on request, shall assist handicapped, disabled, blind, and elderly passengers in boarding buses (including advance boarding and seating) and using terminal accommodations and baggage service. A notice indicating where and from whom such assistance may be obtained shall be displayed prominently at all terminals.

(c) *Terminal accommodations.* (1) All terminals shall be constructed so that accommodations are accessible to handicapped, disabled, blind, and elderly passengers.

(2) All terminal construction or substantial renovation shall conform to the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," Number A117.1-1961 (R1971) approved by the American National Standards Institute, Inc.

§ 1063.9 Identification—bus and driver.

Each bus and driver providing service shall be identified in a manner visible to passengers. The driver may be identified by name or company number.

§ 1063.10 Relief from provisions.

(a) *Petitions.* Where compliance with any rule would impose an undue burden on a carrier, it may petition the Commission either to treat it as though it were conducting a commuter service or to waive the rule. The request for relief must be justified by appropriate verified statements.

(b) *Notice to the public.* The carrier shall display conspicuously, for at least 30 days, in each facility and on each bus affected, a notice of the filing of any petition. The notice shall contain the carrier's name and address, a concise description of and reasons for the relief sought, and a statement that any interested person may file written comments with the Commission (with one copy mailed to the carrier) on or before a specific date that is at least 30 days later than the date the notice is posted.

PART 1064—NOTICE OF AND PROCEDURES FOR BAGGAGE EXCESS VALUE DECLARATION

Sec.

1064.1 Minimum permissible limitations for baggage liability.
1064.2 Notice of passenger's ability to declare excess value on baggage.
1064.3 Baggage excess value declaration procedures.

AUTHORITY: 49 U.S.C. 1 and 301 et seq. and 5 U.S.C. 553 and 559.

§ 1064.1 Minimum permissible limitations for baggage liability.

(a) Motor common carriers of passengers and baggage subject to 49 U.S.C. 10521 may not publish tariff provisions limiting their liability for loss or damage to baggage checked by a passenger transported in regular route or special operations unless:

(1) The amount for which liability is limited is $250 or greater per adult fare, and

(2) The provisions permit the passenger, for an additional charge, to declare a value in excess of the limited amount, and allow the passenger to recover the increased amount (but not higher than the actual value) in event of loss or damage. The carriers may publish a maximum value for which they will be liable, but that maximum value may not be less than $1,000. Appropriate identification must be attached securely by the passenger to each item of baggage checked, indicating in a clear and legible manner the name and address to which the baggage should be forwarded if lost and subsequently recovered. Identification tags shall be made immediately available by the carriers to passengers upon request.

(3) Carriers need not offer excess value coverage on articles listed in § 1063.4(c)(3).

(49 U.S.C. 10321, 5 U.S.C. 553)

[46 FR 22899, Apr. 22, 1981, as amended at 47 FR 21840, May 20, 1982]

§ 1064.2 Notice of passenger's ability to declare excess value on baggage.

(a) All motor common carriers of passengers and baggage subject to part II of the Interstate Commerce Act, which provide in their tariffs for the declaration of baggage in excess of a free baggage allowance limitation, shall provide clear and adequate notice to the public of the opportunity to declare such excess value on baggage.

(b) The notice referred to in paragraph (a) of this section shall be in large and clear print, and shall state as follows:

NOTICE—BAGGAGE LIABILITY

This motor carrier is not liable for loss or damage to properly identified baggage in an amount exceeding $——. If a passenger desires additional coverage for the value of his baggage he may, upon checking his baggage, declare that his baggage has a value in excess of the above limitation and pay a charge as follows:

IDENTIFY YOUR BAGGAGE

Under I.C.C. regulations, all baggage must be properly identified. Luggage tags should indicate clearly the name and address to which lost baggage should be forwarded. Free luggage tags are available at all ticket windows and baggage counters.

The statement of charges for excess value declaration shall be clear, and any other pertinent provisions may be added at the bottom in clear and readable print.

(c) The notice referred to in paragraphs (a) and (b) of this section shall be (1) placed in a position near the ticket seller, sufficiently conspicuous to apprise the public of its provisions, (2) placed on a form to be attached to each ticket issued (and the ticket seller shall, where possible, provide oral notice to each ticket purchaser to read the form attached to the ticket), (3) placed in a position at or near any location where baggage may be checked, sufficiently conspicuous to apprise each passenger checking baggage of its provisions, and (4) placed in a position at each boarding point or waiting area used by the carrier at facilities maintained by the carrier or its agents, sufficiently conspicuous to apprise each boarding passenger of the provisions of the said notice.

[40 FR 1249, Jan. 7, 1975]

§ 1064.3 Baggage excess value declaration procedures.

All motor common carriers of passengers and baggage subject to part II of the Interstate Commerce Act, which provide in their tariffs for the declaration of baggage value in excess of a free baggage allowance limitation, shall provide for the declaration of excess value on baggage at any time or place where provision is made for baggage checking, including (a) at a baggage checking counter until 15 minutes before scheduled boarding time, and (b) at the side of the bus or at a baggage checking counter in reasonable proximity to the boarding area during boarding at a terminal or any authorized service point.

[40 FR 1249, Jan. 7, 1975]

PART 1067—FITNESS PROCEDURES

Sec.
1067.1 Definition.
1067.2 Intervention by the Department of Transportation.
1067.3 Effect of adverse fitness finding on subsequent application.

AUTHORITY: 49 U.S.C. 3102, 10922, 10923, and 10927; 5 U.S.C. 552, 553, and 559.

SOURCE: 55 FR 11201, Mar. 27, 1990, unless otherwise noted.

§ 1067.1 Definition.

Fitness means an applicant's willingness or ability to conform to the Interstate Commerce Act and the regulations of the Interstate Commerce Commission and the Department of Transportation (DOT). (*See* 49 CFR 1160.5(a)(3).)

§ 1067.2 Intervention by the Department of Transportation.

(a) DOT may participate in application proceedings on the issue of fitness (by Memorandum of Agreement between the Commission and DOT, dated April 3, 1967, provision 2) by notifying the applicant and by filing a petition for leave to intervene setting forth generally the nature of the evidence it will present, within 30 days (protest period) of publication of a notice of such application in the *ICC Register*. Applicant may reply within 15 days of such filing. If DOT has not petitioned to intervene, its subsequent participation may be authorized at the Commission's discretion.

(b) This rule does not alter DOT's right to file a formal complaint with the Commission or to petition the Commission to institute on its own motion a formal investigation proceeding regarding a regulated carrier's practices.

§ 1067.3 Effect of adverse fitness finding on subsequent application.

An administratively final adverse fitness determination is not necessarily fatal to a subsequent application, which shall be considered on the same basis as that of any applicant not found unfit. Prior adverse findings may be officially noticed and may be found to bear on applicant's fitness.

PARTS 1070–1079—WATER CARRIERS—GENERAL

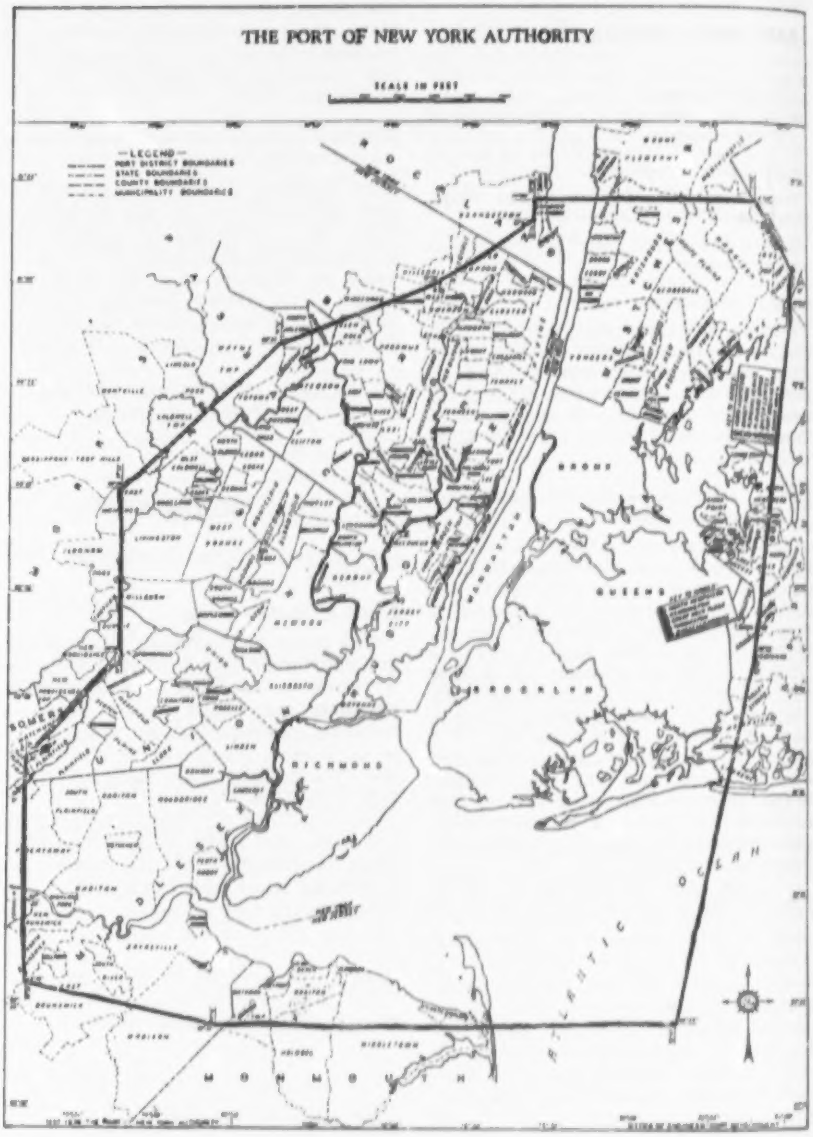
PART 1070—HARBORS

AUTHORITY: 49 U.S.C. 10541, 10543, 10544, and 10929.

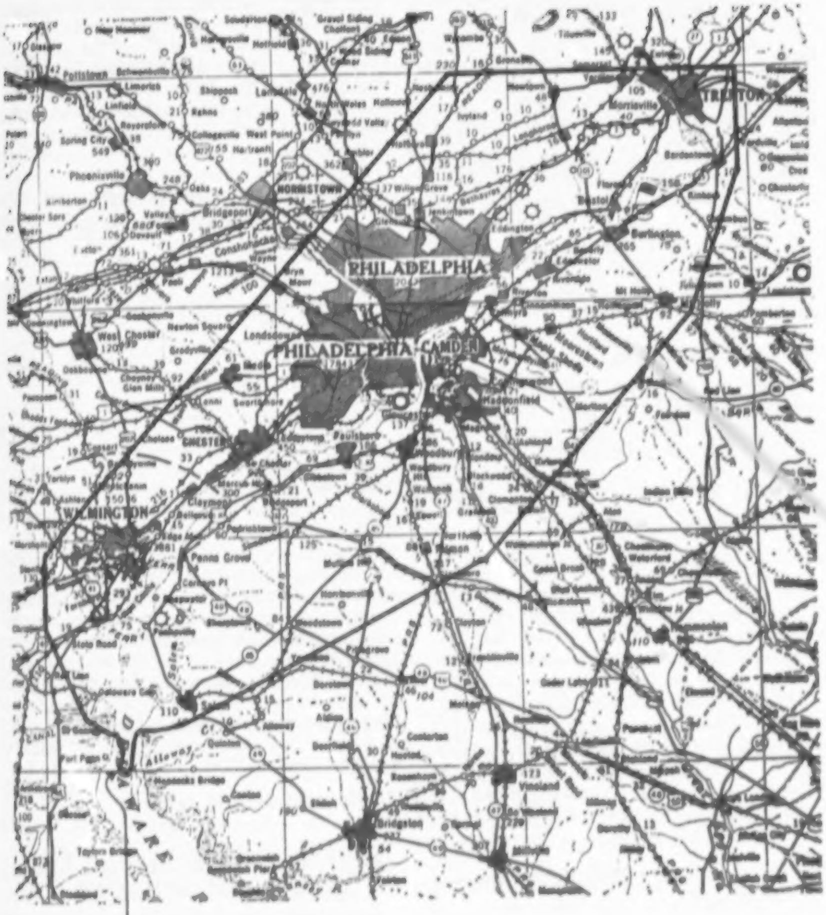
§ 1070.1 Harbor limits.

The following harbors, within which transportation in interstate commerce by water is not part of a continuous through movement under common control, management, or arangement to or from a place outside the limits, are exempt from regulation under 49 U.S.C. 10544(a):

(a) *New York, NY.* The waters within the area over which the Port of New York Authority has jurisdiction as shown by the heavy black line in the following map:


THE PORT OF NEW YORK AUTHORITY
SCALE IN FEET
—LEGEND—
PORT DISTRICT BOUNDARIES
STATE BOUNDARIES
COUNTY BOUNDARIES
MUNICIPALITY BOUNDARIES
BRONX
QUEENS
BROOKLYN
RICHMOND
MANHATTAN
ATLANTIC OCEAN
MONMOUTH
LIVINGSTON
LINDEN
JERSEY CITY

(b) *Philadelphia, PA.* The waters within the area enclosed by the heavy black line in the following map:


PHILADELPHIA
PHILADELPHIA-CAMDEN
TRENTON
NORRISTOWN
WILMINGTON
CHESTER
Pottstown
Phoenixville
Bridgeport
Conshohocken
West Chester
Morrisville
Bristol
Burlington
Bordentown
Haddonfield
Paulsboro
Penns Grove
Vineland
Bridgeton
Millville
DELAWARE

(EXPLOSIVES ANCHORAGE)

[32 FR 20060, Dec. 20, 1967, as amended at 55 FR 11201, Mar. 27, 1990]

PART 1071—EXEMPTION OF WATER CARRIER OPERATIONS

Sec.
1071.1 Vessel leasing.
1071.2 Towage of floating objects.
1071.3 Passenger transportation through foreign ports.
1071.4 Certificate of exemption—transportation of property of a person owning substantially all of the carrier's voting stock.

AUTHORITY: 49 U.S.C. 10101, 10321, and 10544, and 5 U.S.C. 553.

SOURCE: 53 FR 23401, June 22, 1988, unless otherwise noted.

§ 1071.1 Vessel leasing.

Leases or charters entered into by contract carriers by water and persons that are not carriers are exempt from chapter 105, subchapter III, of title 49, subtitle IV, U.S. Code, to the extent the lease or charter is used to transport the person's own property.

§ 1071.2 Towage of floating objects.

Transportation by contract carriers of empty vessels to and from shipyards, floating objects such as derricks, dredges, tanks, caissons, pontoons, and other floating objects, other than logs and pilings in rafts, of varying shapes, sizes, and drafts which are not designed or used for the carrying of passengers and property, is exempt from the requirements of chapter 105, subchapter III, of title 49, subtitle IV, U.S. Code.

§ 1071.3 Passenger transportation through foreign ports.

Water carriers engaged in transportation of passengers between places in the United States through a foreign port are exempt from the jurisdiction of the Interstate Commerce Commission under chapter 105, subchapter III, of title 49, subtitle IV, U.S. Code.

§ 1071.4 Certificate of exemption—transportation of property of a person owning substantially all of the carrier's voting stock.

A water carrier transporting only the property of a person owning 80 percent or more of the voting stock of the carrier is exempt from the jurisdiction of the Interstate Commerce Commission under chapter 105, subchapter III, of title 49, subtitle IV, U.S. Code.

PARTS 1080–1089—FREIGHT FORWARDERS—GENERAL

PART 1081—BILLS OF LADING

AUTHORITY: 49 U.S.C. 10701, 10702, 10730, 10741, 10766, 10927, 11101, and 11707.

§ 1081.1 Bills of lading.

Every household goods freight forwarder (HHGFF) shall issue the shipper through bills of lading, covering transportation from origin to ultimate destination, on each shipment for which it arranges transportation in interstate commerce. Where a motor common carrier receives freight at the origin and issues a receipt therefor on its form with a notation showing the HHGFF's name, the HHGFF, upon receiving the shipment at the "on line" or consolidating station, shall issue a through bill of lading on its form as of the date the carrier receives the shipment.

[55 FR 11201, Mar. 27, 1990]

PART 1084—SURETY BONDS AND POLICIES OF INSURANCE

Sec.
1084.1 Definitions.
1084.2 General requirements.
1084.3 Limits of liability.
1084.4 Surety bonds and certificates of insurance.
1084.5 Insurance and surety companies.
1084.6 Qualifications as a self-insurer and other securities or agreements.
1084.7 Forms and procedure.
1084.8 Acceptance and revocation by Commission.

Sec.
1084.9 Fiduciaries.

AUTHORITY: 49 U.S.C. 10102, 10321, and 10927; 5 U.S.C. 553.

SOURCE: 55 FR 11201, Mar. 27, 1990, unless otherwise noted.

§ 1084.1 Definitions.

(a) *Freight forwarder* means a person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, motor, or water carrier) to provide transportation of property for compensation in interstate commerce, and in the ordinary course of its business:

(1) Performs or provides for assembling, consolidating, break-bulk, and distribution of shipments; and

(2) Assumes responsibility for transportation from place of receipt to destination; and

(3) Uses for any part of the transportation a carrier subject to Commission jurisdiction.

(b) *Household goods freight forwarder* (HHGFF) means a freight forwarder of household goods, unaccompanied baggage, or used automobiles.

(c) *Motor vehicle* means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used to transport property, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails. The following combinations will be regarded as one motor vehicle:

(1) A tractor that draws a trailer or semitrailer; and

(2) A truck and trailer bearing a single load.

§ 1084.2 General requirements.

(a) *Cargo.* A freight forwarder (including a HHGFF) may not operate until it has filed with the Commission an approriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed at § 1084.3, for loss of or damage to property.

(b) *Public liability.* A HHGFF may not perform transfer, collection, and delivery service until it has filed with the Commission an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed at § 1084.3, conditioned to pay any final judgment recovered against such HHGFF for bodily injury to or the death of any person, or loss of or damage to property (except cargo) of others, or, in the case of freight vehicles described at 49 CFR 1043.2(b)(2), for environmental restoration, resulting from the negligent operation, maintenance, or use of motor vehicles operated by or under its control in performing such service.

§ 1084.3 Limits of liability.

The minimum amounts for cargo and public liability security are identical to those prescribed for motor carriers at 49 CFR 1043.2.

§ 1084.4 Surety bonds and certificates of insurance.

(a) The limits of liability under § 1084.3 may be provided by aggregation under the procedures at 49 CFR part 1043.

(b) Each policy of insurance used in connection with a certificate of insurance filed with the Commission shall be amended by attachment of the appropriate endorsement prescribed by the Commission (or the Department of Transportation, where applicable).

§ 1084.5 Insurance and surety companies.

A certificate of insurance or surety bond will not be accepted by the Commission unless issued by an insurance or surety company that is authorized to issue such bonds or underlying insurance policies:

(a) In each State in which the HHGFF is authorized to operate; or

(b) In the State in which the HHGFF has its principal place of business or domicile, and will designate in writing upon request by the Commission a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any State in which the HHGFF operates; or

(c) In any State, and is eligible as an excess or surplus lines insurer in any State in which business is written, and will make the designation of process agent prescribed in paragraph (b) of this section.

§ 1084.6 Qualifications as a self-insurer and other securities or agreements.

(a) *Self-insurer.* The Commission will approve the application of a freight fowarder to qualify as a self-insurer if it is able to meet its obligations for bodily-injury, property-damage, and cargo liability without adversely affecting its business.

(b) *Other securities and agreements.* The Commission will grant applications for approval of other securities and agreements if the public will be protected as contemplated by 49 U.S.C. 10927(c).

§ 1084.7 Forms and procedure.

(a) *Forms.* Endorsements for policies of insurance, surety bonds, certificates of insurance, applications to qualify as a self-insurer or for approval of other securities or agreements, and notices of cancellation must be in the form prescribed at 49 CFR part 1043.

(b) *Procedure.* Certificates of insurance, surety bonds, and notices of cancellation must be filed with the Commission in triplicate.

(c) *Names.* Certificates of insurance and surety bonds shall be issued in the full name (including any trade name) of the individual, partnership (all partners named), corporation, or other person holding or to be issued the permit.

(d) *Cancellation.* Except as provided in paragraph (e) of this section, certificates of insurance, surety bonds, and other securities and agreements shall not be cancelled or withdrawn until 30 days after the Commission receives written notice from the insurance company, surety, freight forwarder, or other party, as the case may be.

(e) *Termination by replacement.* Certificates of insurance or surety bonds may be replaced by other certificates of insurance, surety bonds, or other security, and the liability of the retiring insurer or surety shall be considered as having terminated as of the replacement's effective date, if acceptable to the Commission.

§ 1084.8 Acceptance and revocation by Commission.

The Commission may at any time refuse to accept or may revoke its acceptance of any surety bond, certificate of insurance, qualifications as a self-insurer, or other security or agreement that does not comply with these rules or fails to provide adequate public protection.

§ 1084.9 Fiduciaries.

(a) *Interpretations.* The terms "insured" and "principal" as used in a certificate of insurance, surety bond, and notice of cancellation, filed by or for a freight forwarder, include the freight forwarder and its fiduciary (as defined at 49 CFR 1043.10(a)) as of the moment of succession.

(b) *Span of security coverage.* The coverage furnished for a fiduciary shall not apply after the effective date of other insurance or security, filed with and accepted by the Commission for such fiduciary. After the coverage shall have been in effect 30 days, it may be cancelled or withdrawn within the succeeding 30 days by the insurer, the insured, the surety, or the principal 10 days after the Commission receives written notice. After such coverage has been in effect 60 days, it may be cancelled or withdrawn only in accordance with § 1084.7(d).

PARTS 1090–1099—INTERMODAL TRANSPORTATION

PART 1090—PRACTICES OF CARRIERS INVOLVED IN THE INTERMODAL MOVEMENT OF CONTAINERIZED FREIGHT

Sec.

1090.1 Definition of TOFC/COFC service.
1090.2 Exemption of rail and highway TOFC/COFC service.
1090.3 Use of TOFC/COFC service by motor and water carriers.

AUTHORITY: 49 U.S.C. 10321 and 10505; 5 U.S.C. 553.

§ 1090.1 Definition of TOFC/COFC service.

(a) Rail trailer-on-flatcar/container-on-flatcar (TOFC/COFC) service means the transportation by rail, in interstate or foreign commerce, of—

(1) Any freight-laden highway truck, trailer, or semitrailer,

(2) The freight-laden container portion of any highway truck, trailer, or semitrailer having a demountable chassis,

(3) Any freight-laden multimodal vehicle designed to operate both as a highway truck, trailer, or semitrailer and as a rail car,

(4) Any freight-laden intermodal container comparable in dimensions to a highway truck, trailer, or semitrailer and designed to be transported by more than one mode of transportation, or

(5) Any of the foregoing types of equipment when empty and being transported incidental to its previous or subsequent use in TOFC/COFC service.

(b) Highway TOFC/COFC service means the highway transportation, in interstate or foreign commerce, of any of the types of equipment listed in paragraph (a) of this section as part of a continuous intermodal movement that includes rail TOFC/COFC service, and during which the trailer or container is not unloaded.

[52 FR 23660, June 24, 1987]

§ 1090.2 Exemption of rail and highway TOFC/COFC service.

Except as provided in 49 U.S.C. 10505 (e) and (g), 109229(1), and 10530, rail TOFC/COFC service and highway TOFC/COFC service provided by a rail carrier either itself or jointly with a motor carrier as part of a continuous intermodal freight movement is exempt from the requirements of 49 U.S.C. subtitle IV, regardless of the type, affiliation, or ownership of the carrier performing the highway portion of the service. Motor carrier TOFC/COFC pickup and delivery services arranged independently with the shipper or receiver (or its representative/agent) and performed immediately before or after a TOFC/COFC movement provided by a rail carrier are similarly exempt. Tariffs heretofore applicable to any transportation service exempted by this section shall no longer apply to such service. The exemption does not apply to a motor carrier service in which a rail carrier participates only as the motor carrier's agent (Plan I TOFC/COFC), nor does the exemption operate to relieve any carrier of any obligation it would otherwise have, absent the exemption, with respect to providing contractual terms for liability and claims.

[54 FR 51746, Dec. 18, 1989]

§ 1090.3 Use of TOFC/COFC service by motor and water carriers.

(a) Except as otherwise prohibited by these rules, motor and water common and contract carriers may use rail TOFC/COFC service in the preformance of all or any portion of their authorized service.

(b) Motor and water common carriers may use rail TOFC/COFC service only if their tariff publications give notice that such service may be used at their option, but that the right is reserved to the user of their services to direct that in any particular instance TOFC/COFC service not be used.

(c) Motor and water contract carriers may use rail TOFC/COFC service only if their transportation contracts and tariffs (for water carriers) make appropriate provisions therefor.

(d) Tariffs of motor and water common or water contract carriers providing for the use of rail TOFC/COFC service shall set forth the points between which TOFC/COFC service may be used.

[52 FR 27811, July 24, 1987]

PART 1091—ALASKAN MOTOR-OCEAN-MOTOR (AMOM) SUBSTITUTED SERVICE

Sec.
1091.1 Definition.
1091.2 Tariff information and election of service method.

AUTHORITY: 49 U.S.C. 10101-10103, 10301, 10306, 10311, 10321, 10502, 10521, 10561, 10562, 10701-10705, 10708, 10721-10724, 10741-10744, 10761-10763, 10766, 10921, 10922, 10928, 11101, 11102, 11108, 11349, 11501, 11502, 11701, 11702, 11705, 11706, 11708, 11904, 11906, 11909, 11910, and 11914; 5 U.S.C. 553 and 559.

§ 1091.1 Definition

Alaskan Motor-Ocean-Motor (AMOM) Service means the use of a water common carrier subject to the Shipping Act, 1916, as amended, by an irregular-route motor common carrier authorized by the Interstate Commerce Commission to transport property in interstate or foreign commerce between points in Alaska, on the one hand, and, on the other, any point in the contiguous United States, for the movement of its loaded or empty equipment between a seaport in Alaska, on the one hand, and on the other, a seaport on the West Coast of the contiguous United States.

[55 FR 11203, Mar. 27, 1990]

§ 1091.2 Tariff information and election of service method.

Motor carriers using AMOM Service may publish tariffs setting forth different charges for AMOM and all-highway services. The tariff publications must allow the shipper to choose whether AMOM or all-highway service shall be used, and that, absent an election, the shipment will be transported over the lower-cost service. Tariffs embracing AMOM Service charges, including substituted service directories, if used, shall also set forth the underlying operating rights (overhead) relied upon, the service covered by the published charges, the points of substitution between modes of transportation, and the names of the participating carriers.

[55 FR 11203, Mar. 27, 1990]

SUBCHAPTER B—RULES OF PRACTICE

PARTS 1100–1129—RULES OF GENERAL APPLICABILITY

PART 1100—GENERAL PROVISIONS

Sec.
1100.1 Scope of rules.
1100.2 Applicability.
1100.3 Liberal construction.
1100.4 Information and inquiries.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

Source: 47 FR 49548, Nov. 1, 1982, unless otherwise noted.

§ 1100.1 Scope of rules.

These rules govern practice and procedure before the Interstate Commerce Commission under title 49, subtitle IV of the United States Code (49 U.S.C. 10101 *et seq.*). This subchapter will be referred to as the "Rules of Practice".

§ 1100.2 Applicability.

The rules in parts 1100—1129, Rules of General Applicability, establish general rules applicable to all types of proceedings. Other rules in this subchapter establish special rules applicable to particular types of proceedings. When there is a conflict or inconsistency between a rule of general applicability and a special rule, the special rule will govern.

[47 FR 49548, Nov. 1, 1982, as amended at 50 FR 30275, July 25, 1985]

§ 1100.3 Liberal construction.

The rules will be construed liberally to secure just, speedy and inexpensive determination of the issues presented.

§ 1100.4 Information and inquiries.

Persons with questions concerning these rules should either send a written inquiry addressed to the Secretary, Interstate Commerce Commission, Washington, DC 20423, or should telephone the Secretary's Office, (202) 275-7428.

PART 1101—DEFINITIONS AND CONSTRUCTION

Sec.
1101.1 Statutory definitions.
1101.2 Definitions applicable to this subchapter.
1101.3 Construction.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

Source: 47 FR 49548, Nov. 1, 1982, unless otherwise noted.

§ 1101.1 Statutory definitions.

The definitions contained in section 10102 of the Act (49 U.S.C. 10102) apply in this chapter.

§ 1101.2 Definitions applicable to this subchapter.

(a) "Act" or "Interstate Commerce Act" means subtitle IV of title 49 of the United States Code (49 U.S.C. 10101 et seq.).

(b) "Commission" means (1) the Interstate Commerce Commission and (2) any body or individual to which or to whom decision making authority is assigned by the Commission or the Chairman of the Commission, including a division of the Commission, the Chairman, another Commissioner, employee board, an individual employee, an administrative law judge, a joint board, or other hearing officer entitled to act in a particular proceeding. See 49 CFR part 1011, Commission Organization; Delegations of Authority.

(c) "Decision" means any formal, published action of the Commission, including orders and notices.

(d) "Party" means a complainant, defendant, applicant, respondent, protestant, intervener, or petitioner in any proceeding, or other persons permitted or directed by the Commission to participate in a proceeding. It will not include persons merely signing certificates of support or witnesses at oral hearing or in modified procedure proceedings, unless they are otherwise a party to the proceeding. Persons on the docket service list merely for the purpose of receiving copies of Commission releases are not considered parties to the proceeding.

(e) "Proceeding" includes:

(1) An "informal complaint" filed under §§ 1130.1, or 1130.3 or a "formal complaint" alleging violation of any provision of the Act or of any regulation or requirement made pursuant to a power granted by such Act, including petitions on special dockets;

(2) An "application" for (i) the granting of any right, privilege, authority, or relief under or from any provision of the Act or of any regulation or requirement made pursuant to a power granted by such Act, or (ii) the consideration of any submission required by law to be made to the Commission;

(3) An "investigation" instituted by the Commission;

(4) A "rulemaking" proposal instituted by the Commission; or

(5) A petition for exemption filed under 49 U.S.C. 10505 requesting the Commission to exempt from application all or part of subtitle IV of title 49 of the United States Code any person, class of persons, transaction, or service related to a rail carrier.

[47 FR 49548, Nov. 1, 1982, as amended at 50 FR 30275, July 25, 1985]

§ 1101.3 Construction.

The rules of construction contained in chapter 1 of title 1 of the United States Code (1 U.S.C. 1 et seq.) apply in this chapter. Among other things, they provide that the singular includes the plural, and vice versa; that the masculine includes the feminine; that the word "person" includes corporations, associations, and the like; that "county" includes parish and similar subdivisions; and that "company" includes successors and assigns.

PART 1102—COMMUNICATIONS

AUTHORITY: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1102.1 How addressed.

All communications should be addressed to the Secretary of the Commission, Interstate Commerce Commission, Washington, DC 20423 unless otherwise specifically directed by another Commission regulation. All communications should designate the docket number and title, if any. The person communicating shall state his address, and the party he represents.

[47 FR 49548, Nov. 1, 1982]

§ 1102.2 Ex parte communications prohibited; penalties provided.

(a) *Definitions.* (1) "On-the-record proceeding" means any matter described in Sections 556-557 of the Administrative Procedure Act (5 U.S.C. 556-557) or any matter required by the Constitution, statute, Commission rule, or by decision in the particular case, that is decided solely on the record made in a Commission proceeding.

(2) "Person who intercedes in any proceeding" means any person, partnership, corporation, or association, private or public, outside of the Commission which is neither a party nor party's agent, that volunteers a communication that it has reason to know may advance or adversely affect the interest of a party or party's agent in any proceeding before the Commission.

(3) "*Ex Parte* communication concerning the merits" means an oral or written communication by or on the behalf of a party which is made without the knowledge or consent of any other party that could or is intended to influence anyone who participates or could reasonably be expected to participate in the decision.

(b) *Communications that are not prohibited.* (1) Any communication to which all the parties to the proceeding agree, or on which the Commission formally rules, may be made on an *ex parte* basis;

(2) Any communication of facts or contention which has general significance for a regulated industry if the communicator cannot reasonably be expected to have known that the facts or contentions are material to a substantive issue in a pending on-the-record proceeding in which it is interested;

(3) Any communication by means of the news media that in the ordinary course of business of the publisher is intended to inform the general public,

members of the organization involved, or subscribers to such publication with respect to pending on-the-record proceedings.

(c) *Prohibitions.* (1) No party, counsel, agent of a party, or person who intercedes in any on-the-record proceeding shall engage in any *ex parte* communication concerning the merits of the proceeding with any Commissioner, hearing officer, joint board member, employee board member or employee of the Commission who participates, or who may reasonably be expected to participate, in the decision in the proceeding.

(2) No Commissioner, hearing officer, joint board member, employee board member or employee of the Commission who participates, or is reasonably expected to participate, in the decision in an on-the-record proceeding shall invite or knowingly entertain any *ex parte* communication concerning the merits of a proceeding or engage in any such communication to any party, counsel, agent of a party, or person reasonably expected to transmit the communication to a party or party's agent.

(d) *When prohibitions take effect.* The prohibitions against *ex parte* communications concerning the merits of a proceeding apply from the date on which a proceeding is noticed for oral hearing or for the taking of evidence by modified procedure, or when the person responsible for the communication has knowledge that the proceeding will be so noticed, or at any time the Commission, by rule or decision, specifies.

(e) *Procedure required of Commission members and employees upon receipt of ex parte communications concerning the merits of a proceeding.* Any person who receives an *ex parte* communication concerning the merits of a proceeding must promptly transmit either the written communication, or a written summary of the oral communication with an outline of the surrounding circumstances to the Secretary of the Commission. The Secretary shall place all of the material in the correspondence section of the public docket of the proceeding. A recipient of such *ex parte* communication, who has doubt as to the nature of the communication, may request a ruling on the question from the Commission's General Counsel. The General Counsel shall promptly reply to such requests. The Secretary shall promptly notify the Chairman of the Commission of such *ex parte* communications sent to the Secretary. The General Counsel shall promptly notify the Chairman of all requests for rulings sent to the General Counsel. The Chairman may require that any communication be placed in the correspondence section of the docket when fairness requires that it be made public, even if it is not a prohibited communication. The Chairman may direct the taking of such other action as may be appropriate under the circumstances.

(f) *Sanctions.* (1) The Commission may censure, suspend, or revoke the privilege of practicing before the agency of any person who knowingly and willfully engages in or solicits prohibited *ex parte* communication concerning the merits of a proceeding.

(2) The relief or benefit sought by a party to a proceeding may be denied if the party, or his agent knowingly and willfully violates the foregoing rules.

(3) The Commission may censure, suspend, dismiss, or institute proceedings to suspend or dismiss any Commission employee who knowingly and willfully violates the foregoing rules.

[47 FR 49548, Nov. 1, 1982]

PART 1103—PRACTITIONERS

Subpart A—General Information

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1103.2 Attorneys-at-law—qualifications and requirements to practice before the Commission.
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THE PRACTITIONER'S DUTIES AND RESPONSIBILITIES REGARDING WITNESSES, OTHER LITIGANTS AND THE PUBLIC

1103.24 Use of adverse witnesses.
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1103.26 Discussion of pending litigation in the public press.
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1103.33 Responsibility when proposing a person for admission to practice before the Commission.
1103.34 Intermediaries.
1103.35 Partnership or professional corporation names and titles.

AUTHORITY: 49 U.S.C. 10308 and 10321; 5 U.S.C. 559; 21 U.S.C. 853a.

SOURCE: 47 FR 49549, Nov. 1, 1982, unless otherwise noted.

Subpart A—General Information

§ 1103.1 Register of practitioners.

The Commission maintains a register containing the names of all non-attorneys entitled to practice before it. The register is maintained according to the individual non-attorney practitioner's name and not by corporate or firm name. Corporations and firms are not admitted or recognized as practitioners before the Commission.

§ 1103.2 Attorneys-at-law—qualifications and requirements to practice before the Commission.

Any person who is a member in good standing of the bar of the highest court of any State, Commonwealth, possession, territory, or the District of Columbia may represent persons before the Commission.

§ 1103.3 Persons not attorneys-at-law—qualifications and requirements for practice before the Commission.

(a) *In general.* Any citizen or resident of the United States, not an attorney-at-law, who files an application for admission to practice, accompanied by the payment of the fee prescribed by rule or order of the Commission, and who successfully completes the practitioners' examination, and shows that applicant possesses the necessary legal and technical qualifications to enable applicant to render valuable service before the Commission and that applicant is competent to advise and assist in the presentation of matters before the Commission, may be permitted to practice before the Commission.

(b) *Qualifications standards.* A non-attorney applicant for admission to practice must meet one of the following requirements:

(1) An applicant must have completed 2 years (60 semester hours or 90 quarter hours) of post secondary education and must possess technical knowledge, training or experience in the field of transportation which is regarded by the Commission as the equivalent of 2 additional years of college education;

(2) An applicant must have worked in the field of transportation for at least 10 years;

(3) An applicant must have received a bachelor's degree with at least 12 semester hours or 18 quarter hours in transportation or business; or

(4) An applicant must have received a bachelor's degree and worked in the field of transportation for at least one year. An applicant's statement of college education must be supported by a transcript of records attached to the original application. Transcripts from any college accredited by the U.S. Department of Education will be accepted without question. With all other institutions, the burden of proof is on the applicant to establish that the formal education satisfies the standards set forth above. The qualifications standards are intended as general guidelines. Individual situations that vary from the standards will continue to be evaluated on their own merits.

(c)(1) *Application for admission.* An application filed pursuant to this rule under oath for admission to practice shall be submitted between January and May 15 of the year in which the examination is to be taken. The application is to be completed in full on the form provided by the Commission, and shall be addressed to the Secretary, Interstate Commerce Commission, Washington, DC 20423, to the attention of the room number indicated on the form.

(2) *Certification:* All applicants must complete the following certification:

I, ________ (Name) ________, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal Benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

(d) *Application fee.* Each application filed pursuant to this rule must be accompanied by the non-refundable fee in the amount set forth in 49 CFR 1002.2(f)(100). Payment must be made either by check or money order payable to the Interstate Commerce Commission. Cash payment will not be accepted.

(e) *Additional certification.* (1) When an application meets the required standards, a copy will be referred to the Association of Interstate Commerce Commission Practitioners for a report to the Commission as to the reputation and character of the applicant. Inquiry also will be made by the Commission of the sponsors as to their knowledge of the applicant's legal and technical qualifications as contemplated by the Commission's Rules of Practice. If the Commission is satisfied as to the applicant's qualifications, reputation and character, then applicant will be considered eligible to take the examination.

(2) The Commission may require an applicant's sponsors to provide a detailed statement of the nature and extent of their knowledge of applicant's qualifications. Upon consideration of this material, if the Commission is not satisfied as to the adequacy of applicant's qualifications, the applicant will be notified by registered mail. Applicant may then request a hearing to prove his qualifications. If applicant makes such a request, the Commission will allow a hearing. In the absence of a request for a hearing within 20 days after receipt of the notice, the application will be considered withdrawn.

(f) *Scope of examination.* If applicant meets the educational and experience standards, and is found to be of good character, the applicant will be permitted to take the examination. The examination tests the applicant's experience and knowledge of the principal regulations, laws, and economic principles in the field of transportation as well as knowledge of the Commission's Rules of Practice and Canons of Ethics.

(g) *Time and place of examination.* The examination will be conducted once a year on the second Tuesday in July. Notice of the time and place to appear for the examination will be mailed to qualifying applicants approximately 30 days prior to the date of the examination.

(h) *Location of examination.* Examinations will ordinarily be conducted in selected cities where Commission offices are located. A listing of the available sites will be attached to the application form. Applicants may select their preferred examination site. If a group of prospective applicants (three applicants or more) wishes to take the examination at a location not listed, a letter stating the preferred test site should be included with the application. The Commission will make every effort to administer the test at the requested location.

(i) *Examination results.* Results will be released within 90 days after the examination. Individual results will be forwarded to the applicants at least 1 week before being publicly released. To protect the privacy of those taking the examination, individual grades will not be released over the telephone to anyone. Requests for grades may, however, be submitted in writing to the Office of the Secretary to the attention of the address stated in the application form.

(j) *Failure to appear for examination.* Applicants who have failed to appear for, or postponed taking an examination, a total of three times without showing good cause will have any subsequently filed application returned.

(k) Failing or postponing the examination. Applicants who fail the examination may reapply by submitting a request in writing with an additional filing fee in the amount set forth in 49 CFR 1002.2(f)(100). Applicants who postpone taking the examination three times without showing good cause will have their applications returned.

(l) The filing fee in the amount set forth in 49 CFR 1002.2(f)(100) is not refundable.

(m) Any application resubmitted to the Commission after being returned must be accompanied by a filing fee in the amount set forth in 49 CFR 1002.2(f)(100).

(n) *Content and grading of examination.* The Employee Board on Education and Practice is responsible, under the general supervision of the Vice-Chairman, for the examination of non-attorney applicants, for the preparation of examination questions, and for grading examinations. The Board consists of two attorneys and one non-attorney appointed by the Chairman with the approval of the Commission. Under the supervision of this Board, a seven-member Committee of Examiners will grade the examination questions. The members of this Committee must have at least 2 years experience with the Commission and are appointed for a 2 year term by the Chairman, with the approval of the Commission. Members may be reappointed and, to the extent possible, no more than three members of the Committee will be replaced at one time.

(o) *Applicant's oath.* No applicant shall be admitted to practice before the Commission until applicant shall subscribe to an oath or affirmation that applicant will conduct practice uprightly and according to the law, as a practitioner before the Commission, and that applicant will support the Constitution of the United States and laws of the United States and will conform to the rules and regulations of the Commission.

[47 FR 49549, Nov. 1, 1982, as amended at 49 FR 38614, Oct. 1, 1984; 52 FR 46483, Dec. 8, 1987; 54 FR 48250, Nov. 22, 1989]

§ 1103.4 Initial appearances.

Practitioners shall file a declaration that they are authorized to represent the particular party on whose behalf they appear at the time of making an initial appearance, in all proceedings. This requirement can be met by:

(a) Entering the practitioner's name as the representative of an applicant in the appropriate space on an application form;

(b) Signing any complaint, petition, protest, reply or other pleading with a designation following the practitioner's signature that he is the representative of a party;

(c) Entering an appearance at any hearing on the form provided; or

(d) Filing a letter with the Secretary of the Commission stating that practitioner is authorized to represent a party. The party represented, their address, and the docket number of the proceeding must also be identified at the time of the initial appearance.

§ 1103.5 Discipline.

(a) A member of the Commission's bar may be subject to suspension, disbarment, or other disciplinary action if it is shown that the practitoner:

(1) Has been suspended or disbarred from practice in any court of record;

(2) Violated any of the Commission's rules including the Canons of Ethics set out in §§ 1103.10 through 1103.35; or

(3) Engaged in conduct unbecoming a member of the bar of the Commission.

(b) The practitioner will be afforded an opportunity to show why he should not be suspended, disbarred, or otherwise disciplined. Upon the practitioner's timely response to the show cause order after any requested hearing, or upon failure to make a timely response to the show cause order, the Commission shall issue an appropriate decision.

Subpart B—Canons of Ethics

§ 1103.10 Introduction.

The following canons of ethics are adopted as a general guide for those admitted to practice before the Interstate Commerce Commission. The practitioners before the Commission include (a) lawyers, who have been regularly admitted to practice law and (b) others who have fulfilled the requirements set forth in § 1103.3. The former are bound by a broad code of ethics and unwritten rules of professional conduct which apply to every activity of a lawyer. The canons do not release the lawyer from any of the duties or principles of professional conduct by which lawyers are bound. They apply similarly to all practitioners before the Commission, but do not negate the applicability of other ethical codes. The canons are organized under three headings, The Practitioner's Duties and Responsibilities to the Commission, The Practitioner's Duties and Responsibilities to the Client, The Practitioner's Duties and Responsibilities to Other Litigants, Witnesses and the Public.

THE PRACTITIONER'S DUTIES AND RESPONSIBILITIES TOWARD THE COMMISSION

§ 1103.11 Standards of ethical conduct in courts of the United States to be observed.

These canons further the purpose of the Commission's Rules of Practice which direct all persons appearing in proceedings before it to conform, as nearly as possible, to the standards of ethical conduct required of practice before the courts of the United States. Such standards are taken as the basis for these specifications and are modified as the nature of the practice before the Commission requires.

§ 1103.12 The practitioner's duty to and attitude toward the Commission.

(a) It is the duty of the practitioner to maintain a respectful attitude toward the Commission and for the importance of the functions it administers. In many respects the Commission functions as a Court, and practitioners should regard themselves as officers of that Court and uphold its honor and dignity.

(b) It is the right and duty of the practitioner to submit grievances about a member or employee of the Commission to the proper authorities when proper grounds for complaint exists. In such cases, charges should be encouraged and the person making them should be protected.

(c) It is the duty of the practitioner to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

§ 1103.13 Attempts to exert political or personal influence on the Commission are prohibited.

(a) It is unethical for a practitioner to attempt to influence the judgment of the Commission by threats of political or personal reprisal.

(b) Marked attention and unusual hospitality on the part of a practitioner to a Commissioner, administrative law judge, or other representative of the Commission, which is unwarranted by the personal relationship of the parties, is subject to misconstruction of motive and should be avoided.

§ 1103.14 Private communications with the Commission are prohibited.

To the extent that the Commission acts in a quasi-judicial capacity, it is improper for litigants, directly or through any counsel or representative, to communicate privately with a Commissioner, administrative law judge, or other representative of the Commission about a pending case, or to argue privately the merits thereof in the absence of the adversaries or without notice to them. Practitioners at all times shall scrupulously refrain from going beyond *ex parte* representations which are clearly proper in view of the administrative work of the Commission in their communication with the Commission and its staff.

THE PRACTITIONER'S DUTIES AND RESPONSIBILITIES TOWARD A CLIENT

§ 1103.15 The practitioner's duty to clients, generally.

The practitioner shall be respectful of the law and its official ministers, and shall not be involved in corruption of public officials or deception of the public. In giving improper service or advice, the practitioner invites and deserves stern condemnation. The practitioner shall observe and advise all clients to observe the statutory law to the best of his knowledge or as interpreted by competent adjudication. The practitioner owes a general duty to practice candor toward his client with respect to all aspects to his service to the client.

§ 1103.16 Adverse influences and conflicting interests.

(a) At the time of the retainer, the practitioner shall disclose to the client all circumstances of his relations to the parties, and any interest in or connection with the case.

(b) It is unethical for a practitioner to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this section, a practitioner represents conflicting interest, when on behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

(c) The obligation to represent the client with undivided fidelity and not to divulge secrets or confidence forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

§ 1103.17 Joint association of practitioners and conflicts of opinion.

(a) A client's offer of the assistance of an additional practitioner should not be regarded as evidence of lack of confidence, but the matter should be left to the determination of the client. A practitioner shall decline association as colleague if it is objectionable to the practitioner first retained, but if the client should relieve the practitioner first retained, another may come into the case.

(b) When practitioners jointly associated in a case cannot agree as to any matter vital to the interest of the client the conflict of opinion should be frankly stated to the client for final determination. The client's decision should be accepted by them unless the nature of the difference makes it impracticable for the practitioner whose judgment has been overruled to cooperate effectively. In that event, it is the practitioner's duty to ask the client to relieve him of his obligation.

(c) It is the right of any practitioner to give proper advice to those seeking relief against an unfaithful or neglectful practitioner. The practitioner against whom the complaint is made should be notified of such action.

§ 1103.18 Withdrawal from employment.

The right of a practitioner to withdraw from employment, once begun, arises only from good cause. The desire or consent of the client is not always sufficient cause for withdrawal. The practitioner shall not abandon the unfinished task to the detriment of the client except for reasons of honor, or the client's persistence over the practitioner's remonstrance in presenting frivolous defenses, or the client's deliberate disregard of an obligation as to fees or expenses. In these cases, the practitioner may be warranted in withdrawing after due notice to the client with time allowed for the employment of another practitioner. Other reasons for withdrawal might include instances in which a practitioner discovers that his client has no cause and the client is determined to continue the cause, or the practitioner's own inability to conduct a case effectively. Upon withdrawing from a case, the practitioner shall refund any part of a retainer which clearly has not been earned.

§ 1103.19 Advising upon the merits of a client's cause.

A practitioner shall try to obtain full knowledge of his client's cause before advising thereon. The practitioner shall give a candid opinion of the merits and probable result of bringing the case or of any related pending or contemplated litigation. The practitioner shall beware of bold and confident assurances to clients, especially where employment may depend upon such assurances. Whenever a fair settlement can be reached, the client shall be advised to avoid or to end litigation.

§ 1103.20 Practitioner's fees and related practices.

(a) *Establishing fees.* In establishing fees, a practitioner shall avoid charges which overestimate the value of his advice and services. A client's ability to pay cannot justify a charge in excess of the value of the service although a client's poverty may require a lesser charge or even no charge at all. Publicly quoted fees should be adhered to when actual charges are made. Practitioners are bound to charge no more than the quoted rates for 30 days following the date of their quotations unless a different period of time for the effectiveness of such rates is clearly specified when quoted, or unless permission to charge a higher rate is obtained from the Vice Chairman of the Commission.

(b) *Compensation, commissions and rebates.* A practitioner shall accept no compensation, commissions, rebates or other advantages from the parties in a proceeding other than his client without the knowledge and consent of his client after full disclosure.

(c) *Contingent fees.* Contingent fees should be only those sanctioned by law. In no case, except a charity case, should fees be entirely contingent upon success.

(d) *Division of fees.* Fees for services should be divided only with another member of the bar of practitioners and should be based upon a division of service or responsibility. It is unethical for a practitioner to retain laymen to solicit his employment in pending or prospective cases, and to reward them by a share of the fees. Such a practice cannot be too severely condemned.

(e) *Suing clients for fees.* Controversies with clients concerning compensation are to be entered into only insofar as they are compatible with self-respect and with the right to receive reasonable compensation for services. Lawsuits against clients should be resorted to only to prevent injustice, imposition or fraud.

(f) *Acquiring interest in litigation.* The practitioner shall not purchase or otherwise acquire any pecuniary interest in the subject matter of litigation which the practitioner is conducting.

(g) *Expenses.* A practitioner may not properly agree with a client that the practitioner shall pay or bear the expenses of litigation. He may in good faith advance expenses as a matter of convenience but must do so subject to reimbursement by the client. A practitioner shall bill and collect from a client, and thereafter retain only such payments and reimbursements for expenses as have actually been incurred in behalf of the client.

(h) *Witnesses' compensation.* Compensation of a witness is not to be made contigent on the success of a case in which the witness is called.

(i) *Dealing with trust property.* Money of the client or other trust property coming into the possession of the practitioner should be reported promptly, and, except with the client's knowledge and consent, should not be commingled with the practitioner's private property or be put to the practitioner's private use.

§ 1103.21 How far a practitioner may go in supporting a client's cause.

A practitioner shall put forth his best effort to maintain and defend the rights of his client. Fear of disfavor of the Commission or public unpopularity should not cause a practitioner to refrain from the full discharge of his duty. The client is entitled to the benefit of any and every remedy and defense authorized by law. The client may expect his counsel to assert every such remedy or defense. However, the practitioner shall act within the bounds of the law. A practitioner shall not violate the law or be involved in any manner of fraud or chicanery for any client.

§ 1103.22 Restraining clients from improprieties.

A practitioner should see that his clients act with the same restraint that the practitioner himself uses, particularly with reference to the client's conduct toward the Commission, fellow practitioners, witnesses and other litigants. If a client persists in improper conduct, the practitioner should terminate their relationship.

§ 1103.23 Confidences of a client.

(a) The practitioner's duty to preserve his client's confidence outlasts the practitioner's employment by the client, and this duty extends to the practitioner's employees as well. Neither practitioner nor his employees shall accept employment which involves the disclosure or use of a client's confidences without knowledge and consent of the client even though there are other available sources of information. A practitioner shall not continue employment when he discovers that this obligation presents a conflict in his duty between the former and the new client.

(b) If a practitioner is falsely accused by his client, he is not precluded from disclosing the truth in respect to the false accusation. The announced intention of a client to commit a crime is not included in the confidence which a practitioner is bound to respect. The practitioner may properly make such disclosures to prevent the act or protect those against whom that is threatened.

THE PRACTITIONER'S DUTIES AND RESPONSIBILITIES REGARDING WITNESSES, OTHER LITIGANTS AND THE PUBLIC

§ 1103.24 Use of adverse witnesses.

A practitioner shall not be deterred from seeking information from a witness connected with or reputed to be biased in favor of an adverse party, if the ascertainment of the truth requires that such a person be called as a witness in a proceeding.

§ 1103.25 Treatment of witnesses, litigants and other counsel.

(a) A practitioner shall always treat adverse witnesses and other litigants with fairness and due consideration. He should never minister to the prejudice of a client in a trial or conduct in a cause. The client has no right to demand that the practitioner representing him abuse the opposing party or indulge in offensive personal attacks.

(b) A practitioner shall not attempt to obstruct Commission investigations or corruptly to influence witnesses and potential witnesses during an investigation.

(c) In conducting a case it is improper for a practitioner to allude to the personal history or the personal peculiarities or idiosyncracies of practitioners on the other side, or otherwise engage in personal abuse of other practitioners.

§ 1103.26 Discussion of pending litigation in the public press.

Attempts to influence the action and attitude of the members and administrative law judges of the Commission through propaganda or through colored or distorted articles in the public press, should be avoided. However, it is not against the public interest or unfair to the Commission if the facts of pending litigation are made known to the public through the press in a fair and unbiased manner and in dispassionate terms. When the circumstances of a particular case appear to justify a statement to the public through the press, it is unethical to make it anonymously.

§ 1103.27 Candor and fairness in dealing with other litigants.

(a) The conduct of practitioners before the Commission and with other practitioners should be characterized by candor and fairness. The practitioner shall observe scrupulously the principles of fair dealing and just consideration for the rights of others.

(b) It is not candid or fair for a practitioner knowingly to misstate or misquote the contents of a paper, the testimony of a witness, the language or the argument of an opposing practitioner, or the language or effect of a decision or a text book; or, with knowledge of its invalidity to cite as authority a decision which has been overruled or otherwise impaired as a precedent or a statute which has been repealed; or in argument to assert as a fact that which has not been proved, or to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

(c) It is dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of cases.

(d) A practitioner shall not offer evidence which he knows the Commission should reject, in order to get the same before the Commission by argument for its admissibility, or arguments upon any point not properly calling for determination. He shall not introduce into an argument remarks or statements intended to influence the bystanders.

(e) A practitioner shall rely on his judgment concerning matters incidental to the trial which may, in some cases, affect the proceeding. For example, a practitioner should not force a matter to trial when there is affliction or bereavement on the part of the opposing practitioner if no harm will come from postponing the proceeding.

(f) A practitioner shall not ignore known customs or practice of the Commission, even when the law permits, without giving timely notice to the opposing practitioner.

(g) Insofar as is possible, important agreements affecting the rights of the clients should be made in writing. It is, however, dishonorable to avoid performance of an agreement fairly made only because it is not made in writing.

§ 1103.28 Negotiations with opposing party.

A practitioner shall not in any way communicate upon the subject of controversy with a party represented by another practitioner except upon express agreement with the practitioner representing such party. He shall not negotiate or make compromises with the other party, but shall deal only with the opposing practitioner. The practitioner shall avoid everything that may tend to mislead a party not represented by a practitioner and should not advise that party as to the law.

§ 1103.29 Public communication and solicitation.

(a) A practitioner shall not make any public communication or solicitation for employment containing a false, fraudulent, misleading, or deceptive statement or claim. This prohibition includes, but is not limited to:

(1) The use of statements containing a material misrepresentation of fact or omission of a material fact necessary to keep the statement from being misleading;

(2) Statements intended or likely to create an unjustifiable expectation; statements of fee information which are not complete and accurate;

(3) Statements containing information on past performance or prediction of future success;

(4) Statements of prior Commission employment outside the context of biographical information; statements containing a testimonial about or endorsement of a practitioner;

(5) Statements containing an opinion as to the quality of a practitioner's services, or statements intended or likely to attract clients by the use of showmanship, puffery, or self-laudation, including the use of slogans, jingles, or sensational language or format.

(b) A practitioner shall not solicit a potential client who has given the practitioner adequate notice that he does not want to receive communications from the practitioner, nor shall a

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practitioner make a solicitation which involves the use of undue influence.

(c) A practitioner shall not solicit a potential client who is apparently in a physical or mental condition which would make it unlikely that he could exercise reasonable, considered judgement as to the selection of a practitioner.

(d) A practitioner shall not pay or otherwise assist any other person who is not also a practitioner and a member or associate of the same firm to solicit employment for the practitioner.

(e) If a public communication is to be made through use of radio or television, it must be prerecorded and approved for broadcast by the practitioner. A recording of the actual transmission must be retained by the practitioner for a period of 1 year after the date of the final transmission.

(f) A paid advertisement must be identified as such unless it is apparent from the context that it is a paid advertisement.

(g) A practitioner shall not compensate or give anything of value to a representative of any communication medium in anticipation of or in return for professional publicity in a news item.

§ 1103.30 Acceptance of employment.

(a) The practitioner must decline to conduct a case or to make a defense when convinced that it is intended merely to harass or to injure the opposing party, or to work oppression or wrong. Otherwise, it is the practitioner's right, and having accepted retainer, it becomes the practitioner's duty, to insist upon the judgement of the Commission as to the merits of the client's claim. The practitioner's acceptance of a case is equivalent to the assertion that the client's case is proper for determination.

(b) No practitioner is obliged to act either as adviser or advocate for every potential client. The practitioner has the right to decline employment. Every practitioner shall decide what employment he will accept, what cases he will bring before the Commission for complainants, or contest for defendants or respondents.

§ 1103.31 Responsibility for litigation.

The practitioner bears the responsibility for advising as to questionable transactions, bringing questionable proceedings, or urging questionable defenses. Client's instructions cannot be used as an excuse for questionable practices.

§ 1103.32 Discovery of imposition and deception and duty to report corrupt or dishonest conduct.

(a) The practitioner, upon detecting fraud or deception practiced against the Commission or a party in a case, shall make every effort to rectify the practice by advising his client to forego any unjustly earned advantage. If such advice is refused, the practitioner should inform the injured party or that party's practitioner so that appropriate steps may be taken.

(b) Practitioners shall expose without fear or favor before the proper tribunals any corrupt or dishonest conduct and should accept without hestitation employment against a practitioner who has wronged his client. The practitioner upon the trial of a case in which perjury has been committed owes it to the Commission and to the public to bring the matter to the knowledge of the prosecuting authorities.

§ 1103.33 Responsibility when proposing a person for admission to practice before the Commission.

The practitioner shall aid in guarding the bar of the Commission against admission of candidates unfit or unqualified because deficient in either moral character or qualification. A practitioner shall propose no person for admission to practice before the Commission unless from personal knowledge or after reasonable inquiry he sincerely believes and is able to vouch that such person possesses the qualifications prescribed in § 1103.3.

§ 1103.34 Intermediaries.

(a) The services of a practitioner should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and practitioner. The responsibility and qualifications of the practitioner are individual. The practitioner shall avoid all relations which direct the performance of his duties in the interest of such intermediaries. The practitioner's relationship and responsibility to the client should be direct.

(b) The practitioner may accept employment from any organization (such as an association, club or trade organization) authorized by law to be a party to proceedings before the Commission, to render services in such proceedings in any matter in which the organization, as an entity, is interested. This employment should only include the rendering of such services to the members of the organization in respect to the individual affairs as are consistent with the free and faithful performance of his duties to the Commission.

(c) Nothing in this canon shall be construed as conflicting with § 1103.20(d).

§ 1103.35 Partnership or professional corporation names and titles.

In the formation of a partnership or professional corporation among practitioners care should be taken to avoid any misleading name or representation which would create a false impression as to the position or privileges of a member not duly authorized to practice. No person should be held as a practitioner who is not duly qualified under § 1103.2 or § 1103.3 of these rules. No person who is not duly admitted to practice should be held out in a way which will give the impression that he is so admitted. No false or assumed or trade name should be used to disguise the practitioner or his partnership or professional corporation.

PART 1104—FILING WITH THE COMMISSION–COPIES–VERIFICATION–SERVICE–PLEADINGS, GENERALLY

Sec.
1104.1 Address and identification.
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1104.15 Certification of eligibility for Federal benefits under 21 U.S.C. 853a.

AUTHORITY: 49 U.S.C. 10321; 5 U.S.C. 559; 21 U.S.C. 853a.

SOURCE: 47 FR 49554, Nov. 1, 1982, unless otherwise noted.

§ 1104.1 Address and identification.

(a) Except as provided in § 1115.7, pleadings should be addressed to the "Secretary, Interstate Commerce Commission, Washington, DC 20423," and should designate the docket number and title of the proceeding, if known.

(b) The address of the person filing the pleading should be included on the first page of the pleading.

(c) All envelopes in which a pleading is being submitted should be marked in the lower left hand corner with the docket number, if known, (not the full title) and the pleading type.

[47 FR 49554, Nov. 1, 1982, as amended at 48 FR 34475, July 29, 1983; 53 FR 20854, June 7, 1988]

§ 1104.2 Typographical specification generally.

Requirements. All pleadings should:

(a) Be on opaque, unglazed, durable paper not exceeding 8½ by 11 inches. Printing may appear on both sides of a page.

(b) Be doubled-spaced except long quotations which must be singled-spaced and indented.

(c) Be reproduced by printing, or by any other process that results in clear and permanently legible copies. Any print that cannot be reproduced by photography is not acceptable.

§ 1104.3 Copies.

(a) The original and 10 copies of every pleading document or paper permitted or required to be filed under this subchapter must be furnished for the use of the Commission, unless otherwise specifically directed by another Commission regulation or notice in an individual proceeding.

(b) The original and 10 copies of all correspondence relating to a formal proceeding before the Commission must be furnished for the Commission's use, unless otherwise specifically directed by another commission regulation or notice in an individual proceeding.

[47 FR 49554, Nov. 1, 1982, as amended at 48 FR 34475, July 29, 1983; 53 FR 19301, May 27, 1988]

§ 1104.4 Attestation and verification.

(a) *Signature of Attorney or Practitioner.* If a party is represented by a practitioner or an attorney, the original of each paper filed should be signed in ink by the practitioner or attorney, whose address should be stated. The signature of a practitioner or attorney constitutes a certification that the representative:

(1) Has read the pleading, document or paper;

(2) Is authorized to file it;

(3) Believes that there is good ground for the document;

(4) Has not interposed the document for delay;

A pleading, document or paper thus signed need not be verified or accompanied by affidavit unless required elsewhere in these rules.

(b) *Signature by one not authorized to represent others before the Commission.* The original of each document not signed by a practitioner or attorney must be:

(1) Signed in ink;

(2) Accompanied by the signer's address; and

(3) Verified, if it contains allegations of fact, under oath by the person, in whose behalf it is filed, or by a duly authorized officer of the corporation in whose behalf it is filed. If the pleading is a complaint, at least one complainant must sign and verify the pleading.

§ 1104.5 Affirmation or declarations under penalty of perjury in accordance with 18 U.S.C. 1621 in lieu of oath.

(a) An affirmation will be accepted in lieu of an oath.

(b) Whenever any rule of this Commission requires or permits matter to be supported, evidenced, established, or proved by sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, oath of office, or an oath required to be taken before a special official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proven by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury and dated, in the following form:

> I ——————————, declare (certify, verify, or state) under penalty of perjury ("under the laws of the United States," if executed outside of the United States) that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this (specify type of document). Executed on (*date*).
>
> Signature

(c) Knowing and willful misstatements or omissions of material facts constitute federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to $10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621 which provides for fines up to $2,000 or imprisonment up to 5 years for each offense.

§ 1104.6 Timely filing required.

Documents must be received for filing at the Commission's offices in Washington, DC within the time limits set for filing. The date of receipt at the Commission, and not the date of deposit in the mail, determines the timeliness of filing. However, if a document is mailed by United States express mail, postmarked at least one day prior to the due date, it will be accepted as timely. Other express mail, received by the private express mail carrier at least one day prior to the due date, also will be accepted as timely filed. The term express mail means that the carrier or delivery service offers next day delivery to Washington, DC.

§ 1104.7 Computation and extension of time.

(a) *Computation.* In computing any period of time, the day of the act, event, or default upon which the designated period of time begins to run is not included. The last day of the period is included unless it is Saturday, Sunday, or a legal holiday in the District of Columbia, in which event the period runs until the end of the next day which is not a Saturday, Sunday or holiday. This rule applies to forward and backward measurement of time.

(b) *Extensions.* Any time period, except those provided by law or specified in these rules respecting informal complaints seeking damage may be extended by the Commission in its discretion, upon request and for good cause. Requests for extensions must be served on all parties of record at the same time and by the same means as service is made on the Commission, except if service is made on the Commission in person and personal service on other parties is not feasible, service on other parties should be made by first class or express mail. A request for an extension must be filed not less than 10 days before the due date. Only the original of the request and certificate of service need be filed with the Commission. If granted, the party making the request should promptly notify all parties to the proceeding of the extension and so certify to the Commission, except that this notification is not required in rulemaking proceedings.

(c) *Exception to time computation rules.* See 49 CFR part 1152 for special abandonment rules.

§ 1104.8 Objectionable matter.

The Commission may order that any redundant, irrelevant, immaterial, impertinent, or scandalous matter be stricken from any document.

§ 1104.9 [Reserved]

§ 1104.10 Rejection of a deficient document.

(a) The Commission may reject a document, submitted for filing if the Commission finds that the document does not comply with the rules.

(b) The Commission may either return the material unfiled or tentatively accept the material for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

§ 1104.11 Amendments.

Leave to amend any document is a matter of the Commission's discretion.

§ 1104.12 Service of pleadings and papers.

(a) *Generally.* Every document filed with the Commission should include a certificate showing simultaneous service upon all parties to the proceeding. Service on the parties should be by the same method and class of service used in serving the Commission, with charges, if any, prepaid. One copy should be served on each party. If service is made on the Commission in person, and personal service on other parties is not feasible, service should be made by first-class or express mail. When a party is represented by a practitioner or attorney, service upon the practitioner is deemed to be service upon the party.

(b) *Exceptions.* Copies of letters to the Commission relating to oral argument under part 1116, and subpoenas under § 1113.2, need not be served on other parties of the proceeding. Service of comments in rulemaking proceedings is not required, unless specifically directed by the Commission.

(c) *Sample Certificate of Service.*

I certify that I have this day served copies of document upon all parties of record in this proceeding, by (here state the method of making service which must be consistent with this part).

Signature Date

(49 U.S.C. 10321, 5 U.S.C. 553)

[47 FR 49554, Nov. 1, 1982, as amended at 48 FR 44827, Sept. 30, 1983]

§ 1104.13 Replies and motions.

(a) *Time.* A party may file a reply or motion addressed to any pleading within 20 days after the pleading is filed with the Commission, unless otherwise provided.

(b) *Number of copies.* The original of a reply or motion should be accompanied by the same number of copies required to be filed with the pleading to which the reply or motion is addressed.

(c) *Reply to a Reply.* A reply to a reply is not permitted.

§ 1104.14 Protective orders to maintain confidentiality.

(a) *Segregation of confidential material.* A party submitting materials which it believes are entitled to be kept confidential and not made part of the public docket should submit these materials as a separate package, clearly marked on the outside "Confidential materials subject to a request for a protective order."

(b) *Requests for protective orders.* A request that materials submitted to the Commission be kept confidential should be submitted as a separate pleading and clearly headed "Motion for protective order."

[48 FR 44827, Sept. 30, 1983]

§ 1104.15 Certification of eligibility for Federal benefits under 21 U.S.C. 853a.

(a) An individual who is applying in his or her own name for a certificate, license or permit to operate as a motor, water, or rail carrier, household goods freight forwarder or property broker must complete the certification set forth in paragraph (b) of this section. This certification is required if the transferee in a finance proceedings under 49 U.S.C. 10926, § 11343, or § 11344 is an individual. The certification also is required if an individual applies for authorization to acquire, to construct, to extend, or to operate a rail line.

(b) Certification:

I, ________ (Name) ________, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal Benefits, either by court order or by operation of law, pursuant to 21 U.S.C. 853a.

[54 FR 48250, Nov. 22, 1989]

PART 1105—GUIDELINES FOR IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Sec.

1105.1 Purpose.
1105.2 Responsibility for administration of the Commission's NEPA rules.
1105.3 Information and assistance.
1105.4 Definitions.
1105.5 Determinative criteria.
1105.6 Classification of actions.
1105.7 Reporting requirements.
1105.8 Scoping.
1105.9 Timing, comments, and Commission action.
1105.10 Commission procedures and public involvement.
1105.11 Environmental notice.
1105.12 Effect of rules.

Authority: 49 U.S.C. 10321, 10505, and 10903—10906; 16 U. S. C. 1247(d); 42 U.S.C. 4332 and 5 U.S.C. 553 and 559.

Source: 45 FR 79813, Dec. 2, 1980, unless otherwise noted. Redesignated at 47 FR 49556, Nov. 1, 1982.

§ 1105.1 Purpose.

These rules implement section 102 of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332, and are designed to assure adequate consideration of environmental factors throughout the decisionmaking process.

§ 1105.2 Responsibility for administration of the Commission's NEPA rules.

The Director of the Office of Transportation Analysis is responsible for administration of the Commission's NEPA rules and for the preparation of environmental documents required under such rules.

[45 FR 79813, Dec. 2, 1980. Redesignated at 47 FR 49556, Nov. 1, 1982, and amended at 48 FR 34475, July 29, 1983]

§ 1105.3 Information and assistance.

Information, including the status of studies, the availability of reference materials, as well as informal interpretations of the Commission's NEPA process and other forms of assistance will be made available upon request to: Section of Energy and Environment (Room 4143), Office of Transportation Analysis, Interstate Commerce Commission, 12th & Constitution Ave. NW., Washington, DC 20423, Telephone: 202-275-0800.

[45 FR 79813, Dec. 2, 1980. Redesignated at 47 FR 49556, Nov. 1, 1982, and amended at 48 FR 34475, July 29, 1983]

§ 1105.4 Definitions.

In addition to those definitions contained in the Council on Environmental Quality's Regulations (40 CFR Part 1508), the following definitions apply to the Commission's NEPA process:

(a) "Act" means the Interstate Commerce Act, subtitle IV of title 49, U.S. Code, as amended.

(b) "Assessment" means a concise public document for which the Commission is responsible, that serves:

(1) Briefly to provide sufficient information for determining whether to prepare an environmental impact statement or to make a finding of no significant impact; and

(2) To facilitate preparation of an environmental impact statement when one is necessary.

(c) "Commission" means the Interstate Commerce Commission.

(d) "Environmental Impact Statement" (EIS) means a detailed written statement as required by section 102(2)(c) of NEPA.

(e) "Finding of No Significant Impact" is a document issued by the Commission briefly presenting the reasons why an action not categorically excluded will not have a significant effect on the quality of the human environment and for which an environmental impact statement therefore will not be prepared.

(f) "Environmental Report" or "report" means an analytical document which briefly evaluates the environmental impacts of a proposed action and alternatives. It is to be filed by an applicant with the Commission pursuant to the requirements of this part.

§ 1105.5 Determinative criteria.

In determining whether a "major Federal action," as that term is defined at 40 CFR part 1508, has the potential to affect significantly the quality of the human environment, the Commission will be guided by the definition of "significantly" at 40 CFR part 1508.

§ 1105.6 Classification of actions.

(a) Rail line construction is a class of action that has the potential for significant environmental impact and will normally require an Environmental Impact Statement (EIS).

(b) The following classes of action may involve significant envrionmental impacts, but normally will be addressed in an environmental assessment:

(1) Abandonment, acquisition, or operation of a line of railroad;

(2) Railroad merger, control, or consolidation proceedings;

(3) Discontinuance of passenger trains;

(4) Individual and general freight rate proceedings involving recyclable commodities;

(5) Commutation or suburban passenger fare increases, but only if the proposed increase, when considered together with other increases over the previous 3 years, exceeds by 30 percent (on a compounded basis) the combined inflation rate (as measured by the Consumer Price Index) for those years; and

(6) Legislative proposals, policymakings, and rulemaking proposals affecting carrier operations.

(c) Environmental impacts associated with the following classes of action are insignificant (or ascertainable under other reporting requirements) and, therefore, environmental reports and documentation normally need not be prepared under this part:

(1) Interpretation of operating rights and tariffs;

(2) Proceedings involving only a change in ownership or similar changes, such as issuance of securities or reorganization, but not involving a change in carrier operations including overall levels of employment;

(3) Individual and general freight rate proceedings except to the extent recyclable commodities are involved;

(4) Motor and water carrier, broker, and household goods freight forwarder licensing;

(5) Intercity bus fare adjustments;

(6) Revocation or substantial modification of motor carrier service; and

(7) Applications for common use of rail terminals and trackage rights proceedings.

(d) The classifications established in paragraphs (a), (b), and (c) of this section are not invariable and, where circumstances warrant, the Commission, on its own initiative or upon request, may reclassify, waive or otherwise modify requirements with respect to any proposed action. Where an action categorically excluded from environmental analysis may have significant environmental impacts, an assessment or an EIS may be prepared.

[45 FR 79813, Dec. 2, 1980. Redesignated at 47 FR 49556, Nov. 1, 1982, as amended at 51 FR 44297, Dec. 9, 1986]

§ 1105.7 Reporting requirements.

(a) Each applicant initiating one or more of the classes of action identified in § 1105.6(a) or (b) must submit with its application an Environmental Report as provided in paragraph (c) of this section which will form the basis of any environmental document. Where it is determined that a report should be prepared by an applicant in a categorically excluded proceeding, the applicant will be notified separately and shall submit a report within time limits established in the notification.

(b) Where information required by this part is otherwise included in applicant's pleadings, it may be incorporated by reference into the Environmental Report.

(c) Each Environmental Report shall respond completely to the following questions relative to the proposed action, to the extent applicable. If a question is inapplicable, so state.

(1) *Alternatives.* Have alternatives to the proposed action (*e.g.*, no action or partial approval) been considered? If so, summarize the major environmental impacts associated with each alternative.

(2) *Transportation system.* (i) Will existing regional or local transportation systems or patterns be substantially affected? If so, describe the effects. (ii) Will traffic (passengers or freight) be diverted to other transportation modes or systems? If so, quantify the extent of expected diversion.

(3) *Land use.* (i) Is the proposed action consistent with regional and/or local land use plans (Local and/or regional planning agencies should be consulted in this regard)? If not, describe any inconsistency. (ii) Is a designated Coastal Zone Management area involved? If so, is the proposed action consistent with the affected State's Coastal Zone Management program?

(iii) Are designated wetlands or 100-year flood plains affected? If so, describe the effects. (iv) Are prime agricultural lands, as designated by the Soil Conservation Service, affected? If so, describe the effects.

(4) *Energy.* (i) Will the development of transportation of energy resources be affected? If so, describe the effects.

(ii) Will the movement and/or recovery of recyclable commodities be affected? If so, describe the effects.

(iii) Will the proposed action cause diversion of traffic from rail to motor carriers in excess of (A) 1,000 rail carloads per year or (B) an average of 50 rail carloads per mile per year for all or any part of an affected rail line? If so, quantify the net change in energy consumption as a result of diversion, providing commodity, tonnage, and carload data by station where only part of an affected rail line is involved.

(5) *Air.* Will the proposed action result in (i) a minimum increase in rail traffic of 50 percent or three trains per day on an affected rail line, (ii) an increase in rail yard activity of 20 percent as measured in carload activity or (iii) an increase in motor carrier traffic of either 50 vehicles per day or an increase in truck traffic exceeding 10 percent of the average daily traffic on a given highway segment? If any of the enumerated thresholds is exceeded, quantify the anticipated increase in air emissions. If a class I or nonattainment area is affected, are increased emissions within parameters of the affected State Implementation Plan?

(6) *Noise.* If any of the thresholds identified in item (5) is surpassed, will the proposed action cause an increase in noise levels exceeding either (i) a four decibel incremental increase or (ii) 65 decibels (Utilize the Leg method or its equivalent in Ldn. See *e.g.,* U.S. Environmental Protection Agency, Protective Noise Levels (Nov. 1978))? If so, are sensitive receptors (*e.g.,* schools, libraries, and hospitals) in the affected area? If so, how much above existing or ambient conditions will noise increase for senstive receptors?

(7) *Safety.* Will public health or safety (including vehicle delay time at railroad grade crossings) be affected? If so, describe the effects.

(8) *Wildlife.* (i) Will endangered or threatened species be affected or will critical habitats be destroyed or modified (usually considered only in the context of construction and abandonment proceedings for which applicant should consult with the Fish and Wildlife Service or the Marine Fisheries Service)? If so, describe the effects.

(ii) Will wildlife sanctuaries or refuges, National of State parks or forests be affected? If so, identify each affected site and describe the impacts.

(9) *Water.* (i) Is the proposed action consistent with applicable Federal, State and/or local water quality standards (usually considered only in the context of rail line construction applications and abandonments which will require in-stream salvage operations)? If not, describe any inconsistency.

(ii) Will permits under sections 402 and 404 of the Federal Water Pollution Control Act (33 U.S.C. 1342, 1344) be required? If so, have permits been sought or issued?

(10) *Historic.* (i) Are sites or structures listed in the *National Register of Historic Places* affected? If so, describe the effects.

(ii) Will sites or structures 50 years old or older be affected? If so, and such sites or structures are not listed in the *National Register of Historic Places,* applicant would submit, at the earliest possible juncture, a description of the line, including a map, as well as photographs and descriptions of such structures to the appropriate State Historic Preservation Office for review and include a copy of the cover letter in the Environmental Report.

(iii) Will culturally significant locations, archaeological sites, or unique land forms be affected (usually considered only in the context of rail line construction applications)? If so, applicant should consult with the involved State Historic Preservation Office.

(11) *Additional Reporting Requirements for Rail Line Construction Cases Only.* In addition to the reporting requirements enumerated above, the following information (which is not necessarily all-inclusive) should be included in Environmental Reports submitted for rail line construction applications:

(i) A description of the proposed route corridor and line location by State, county, and subdivision with a plan view at a scale not to exceed 1:24,000 (7½ minute U.S.G.S. quadrangle map) showing the relationship to the existing transportation network including the location of all highway and road crossings together with right-of-way requirements according to ownership and land use type.

(ii) A description of alternative route corridors considered by the applicant together with a statement of reasons for not selecting such corridors.

(iii) A description of construction plans including labor force requirements, the location of borrow pits, if any, and earthwork estimates.

(iv) A description of operations to be conducted upon project completion including freight to be transported, the annual number of train movements and types of cars, motive power requirements, estimated labor force, and proposed maintenance-of-way practices.

(v) A description of the effects, including indirect or down-line impacts, resulting from new or diverted traffic operating over the new line.

(vi) A description of effects, including impacts on essential public services (*e.g.,* fire, police, ambulance, neighborhood schools, et cetera) for communities traversed by the proposed line.

(vii) A discussion of societal impacts including expected change in employment both during and after construction, and the expected net change in annual salaries and wages by county for those counties which will experience a net change of 50 or more employees.

(viii) A description and assessment of the impacts associated with the construction period and a description of mitigation measures planned to minimize each adverse impact.

(d) Where thresholds identified in (c) above are exceeded or where the proposed action otherwise may cause materially adverse impacts, the report should consider and describe appropriate mitigating measures.

(e) Submission of materials and information called for by this part shall not preclude the Office of Energy and Environment from requiring additional pertinent information necessary to make a determination of the proposed action's environmental significance.

(f) The Commission, on its own initiative or upon request, may waive or modify, in whole or part, the provisions of this section. Waiver generally is appropriate where it can be shown that materially adverse environmental impacts will not flow from a proposed action or where other circumstances are present under which the filing of an Environmental Report would constitute an unreasonable burden.

[45 FR 79813, Dec. 2, 1980. Redesignated at 47 FR 49556, Nov. 1, 1982, and amended at 48 FR 34475, July 29, 1983]

§ 1105.8 Scoping.

(a) Scoping is normally employed in actions for which an EIS is prepared (1) to identify environmental issues which should be treated and (2) to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly. Where the Commission is preparing an EIS in cooperation with other agencies, the scoping process may be used to allocate responsibility for the preparation of parts of the EIS among lead and cooperating agencies. If, in preparing an environmental assessment, it becomes apparent that the proposed action has the potential to affect significantly the quality of the human environment, the scoping process generally will be engaged.

(b) Scoping generally will be accomplished through written submissions. The notice of intent to prepare an environmental impact statement normally will include a preliminary outline of the scope of the study to be conducted. Written comments addressing the proposed scope will be invited. All comments received will be considered before a final scoping plan for the environmental study is formulated and published. Where appropriate (typically where issues are complex and in dispute) scoping may take place at a meeting which will be open to interested agencies, parties, and the public.

§ 1105.9 Timing, comments, and Commission action.

(a) Applicants are encouraged to consult with the Section of Energy and Environment for guidance at the earliest possible time prior to instituting a formal proceeding.

(b) If construction and operation of a rail line is contemplated, the prospective applicant is required to notify the Section of Energy and Environment of its intention before beginning work on its Environmental Report, but at least 6 months prior to the date its application is to be filed.

(c) Written comments on a draft EIS will normally be accepted during the 45-day period following service of the draft EIS.

(d) Where oral hearings are to be held in a proceeding for which an EIS has been prepared, the draft EIS will normally be made available to the public at least 15 days prior to any portion of the hearing relating to the EIS.

(e) To the maximum extent practicable, no decision will be made on the merits of an application for at least 90 days following service of the draft EIS and 30 days following service of the final EIS.

(f) The Commission, on its own initiative or upon request, may waive or modify the provisions of this section relative to timing, comments, and Commission action.

[45 FR 79813, Dec. 2, 1980. Redesignated at 47 FR 49556, Nov. 1, 1982, and amended at 48 FR 34475, July 29, 1983]

§ 1105.10 Commission procedures and public involvement.

(a) All Environmental Reports and related material will be analyzed independently by the Section of Energy and Environment at the earliest opportunity and environmental documentation, as necessary, will be prepared. All environmental documentation will be made available to parties and the public.

(b) A Notice of Intent to prepare an EIS will be published in the FEDERAL REGISTER upon a determination that a proposed major action has the potential for significant environmental impacts. The notice may include a preliminary scope of the environmental study.

(c) Completion of both draft and final EIS's will be announced to the public through a Notice of Availability published (normally by the Environmental Protection Agency) in the FEDERAL REGISTER. A Notice of Availability of a draft EIS will invite comments and fix the commenting period. Copies of draft and final EIS's will be served on all parties to the proceeding who have filed an Environmental Report, on Federal agencies with jurisdiction by law or special expertise, and as otherwise appropriate. All other parties will receive by mail a notification that the draft or final EIS has been prepared. These parties and other interested persons may obtain copies of the draft or final EIS upon request made to the Commission's Section of Energy and Environment.

(d) Comments on a draft EIS will be considered by the Branch. In response to comments any one or more of the following measures may be taken:

(1) Modify findings with respect to alternatives including the proposed action;

(2) Develop and evaluate alternatives of merit not previously given serious consideration;

(3) Supplement, improve, or modify the statement as relevant;

(4) Make factual corrections;

(5) Explain why comments do not warrant further response;

(6) Take such other action as may be necessary consistent with the basic purposes of NEPA and relevant authorities.

(e) If an EIS is supplemented, notice and comment procedures outlined above will be followed to the extent practicable.

(f) Other environmental documents (*e.g.*, Environmental Assessments and Findings of No Significant Impact) will be made available to the public.

(g)(1) A Finding of No Significant Impact or an Assessment prepared for an action in which formal adjudicative proceedings are ordered will be made available through notice which will be served on parties of record and published in the FEDERAL REGISTER and/or published in newspapers in the affected area. The notice will invite comments and fix the commenting period.

(2) Comments on a Finding of No Significant Impact or an Assessment will be considered by the Section of Energy and Environment. If warranted, any one or more of the measures outlined in paragraph (d) of this section may be taken in response to comments on Findings of No Significant Impact or Assessments. In addition, if major issues suggesting significant environmental impacts were overlooked, further evaluation in the form of an EIS may be recommended.

(3) In out-of-service rail line exemption proceedings under 49 CFR 1152.50, the Commission, on its own motion, will stay the effective date of individual notices of exemption when an informed decision on pending environmental and historic preservation issues cannot be made prior to the date that the exemption authority would otherwise become effective.

(h) Commission staff responsible for preparing an environmental document shall be subject to cross-examination on the contents of the draft document only where good cause is shown. Good cause contemplates, among other things, a showing that normal written commenting procedures are inadequate.

(i) All final environmental documents including supplements together with comments and responses, if any, and other relevant material will become part of the record of the proceeding, including formal rulemaking and adjudicatory proceedings. The documents shall accompany the proposal through the existing agency review processes.

(j) The decisionmaker will consider the range of alternatives discussed in environmental documents.

[45 FR 79813, Dec. 2, 1980. Redesignated at 47 FR 49556, Nov. 1, 1982, and amended at 48 FR 34475, July 29, 1983; 54 FR 9823, Mar. 8, 1989]

§ 1105.11 Environmental notice.

A carrier filing a notice of intent to abandon a line under § 1152.20(d), a notice of exemption under §§ 1150.31, 1152.50, or 1180.2(d) or a petition for exemption pursuant to 49 U.S.C. 10505 [except when exemption is sought for an action normally not subject to environmental review under § 1105.6(c) of this part] shall serve upon the designated agency in each State a notice of environmental and energy matters, together with its notice or petition. The environmental notice must be in the form specified in the appendix to this section. When filing the notice or petition, a carrier must certify to the Commission that this environmental notice requirement has been satisfied.

[51 FR 26252, July 22, 1986]

APPENDIX—FORM FOR ENVIRONMENTAL NOTICE

(*Carrier Letterhead*)

(Addresses)

(Date)

Simultaneous with this letter, we are filing with the Interstate Commerce Commission a notice of [intent to exempt a transaction or abandon a line or a petition to exempt a transaction or class of transactions from regulation]. A description of the filing and a map of the affected area are provided in an attachment to this letter. The purpose of this letter is to raise relevant environmental and energy matters.

Areas of concern, which you and other interested State and local agencies are invited to address, include but are not limited to the following:

(1) Local land use plans.

(2) The existing transportation system including alternative transportation modes.

(3) Energy consumption.

(4) Air emissions, ambient conditions, and relevant Federal, State, and local standards.

(5) Bodies of water and overall water quality.

(6) Terrestrial and aquatic ecosystems, limited to unique resources and threatened or endangered species.

(7) Ambient noise levels.

(8) Existing or potential safety hazards.

(9) Cultural, historic, or archaeological sites listed or eligible for inclusion in the National Register of Historic Places.

(10) Potential for use for other public purposes or any property proposed for abandonment, including rights-of-way. A request for a public use condition under 49 U.S.C. 10906 must be in writing and set forth: (1) The condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the imposition of the time period. A copy of the request shall be mailed to the applicant.

(11) Prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

We are providing this notice so that you may inform interested State and local agencies of the proposal, and so that you or they may investigate the affected area and provide the Commission with necessary information in timely fashion. This request for environmental information, however, is not related to any agency's rights to file administrative protests or appeals, which are governed by separate procedures.

Because the applicable statutes impose stringent deadlines for processing this action, response within three weeks would be appreciated. Please address the original of any comments directly to the Section of Energy and Environment, Room 4143, Interstate Commerce Commission, Washington, DC 20423.

The information provided will be considered by the Commission together with other material received in evaluating the overall environmental and energy impact of the contemplated action. If there are any questions concerning the affected area or other matters related to the proposal, please contact *our representative directly*.

Questions regarding the form or content of any response to the notice should be referred to the Section of Energy and Environment at the above address. In any communication, please refer to the docket number assigned to this action: (Docket number). Our representative in this matter is (name) and may be contacted by telephone at (telephone number) or by mail (address).

(Complementary close)

(Name and title of author of letter)

[49 FR 15088, Apr. 17, 1984, as amended at 49 FR 15087, Apr. 17, 1984; 51 FR 16853, May 7, 1986]

§ 1105.12 Effect of rules.

These rules repeal the reporting requirements contained in 49 CFR Part

1106 for those classes of action described in § 1106.5(a)(1), (2), (5), (7), and (9). The reporting requirements contained in 49 CFR part 1106 are repealed for that class of action described in § 1106.5(a)(3) only to the extent that the threshold specified in § 1105.6(b)(5) is exceeded.

[45 FR 79813, Dec. 2, 1980. Redesignated at 47 FR 49556, Nov. 1, 1982, and 49 FR 15088, Apr. 17, 1984]

PART 1106—IMPLEMENTATION OF THE ENERGY POLICY AND CONSERVATION ACT OF 1975

Sec.

1106.1 Purpose and scope.
1106.2 Authority.
1106.3 Definitions.
1106.4 Policy.
1106.5 Identification of major regulatory actions.
1106.6 Preparation of statements of energy impact.
1106.7 Reporting requirements.
1106.8 Decisions.

AUTHORITY: 49 U.S.C. 10321; 42 U.S.C. 6362(b); 5 U.S.C. 559.

SOURCE: 43 FR 29948, July 12, 1978, unless otherwise noted.

§ 1106.1 Purpose and scope.

(a) The Energy Policy and Conservation Act (42 U.S.C. 6201 et seq., after this referred to as EPACA) directs and authorizes that certain steps be taken by the Federal and State governments to reduce demand for energy, increase domestic energy supplies, and conserve existing energy supplies through energy conservation programs and improvements in the energy efficiencies of motor vehicles and other consumer products. Efforts should also be made to increase the energy efficiency of all modes of surface transportation subject to Commission regulation.

(b) These regulations establish procedures under which the Commission discharges its duties under the Energy Policy and Conservation Act of 1975. They apply to all proceedings before the Commission.

§ 1106.2 Authority.

(a) Section 382 of EPACA requires the Commission to examine its policies and programs in order to institute measures to reduce energy consumption by persons subject to its regulation. Section 382(b) of the EPACA directs the Commission to include in any major regulatory action, where practicable and consistent with the exercise of its authority under other law, a statement of the probable impact of the major regulatory action on energy efficiency and energy conservation. The statute directs the Commission to define the term "major regulatory action" by rule.

(b) Sections 17(3), 204(a)(6), 304(a), and 403(a) of the Interstate Commerce Act authorize the Commission, consistent with the purpose of the act, to establish rules and procedures which are necessary to the exercise of its functions.

§ 1106.3 Definitions.

(a) "Act" means the Interstate Commerce Act, as amended.

(b) "Application" includes a request by an applicant, complainant, or proponent seeking any right, privilege, authority, or relief under or from any provision of the act, any regulation or requirement made under a power granted by the act, or any other statute conferring jurisdiction upon the Commission.

(c) "Commission" means the Interstate Commerce Commission or decisional unit within the Interstate Commerce Commission.

(d) "EPACA" means the Energy Policy and Conservation Act of 1975.

(e) "Major regulatory action" is any action listed in § 1106.5(a) below or any other activity undertaken, approved, or licensed by the Commission which has the potential for a major impact on the conservation of energy resources or upon energy efficiency or which may have a broad effect on the operations of the surface transportation industry.

(f) "Statement of Energy Impact" (SEI) is a statement included in Commission decisions which describes the probable impact of a major regulatory action on energy conservation or energy efficiency.

§ 1106.4 Policy.

(a) The Commission's policy is to implement EPACA to the fullest extent possible consistent with its existing statutory authority. The goals of furthering energy conservation and energy efficiency are integral parts of the Commission's overall regulatory mandate. Energy considerations are weighed with other relevant considerations in determining whether a proposal is consistent with the public interest or required by the public convenience and necessity.

(b) Energy findings and conclusions are integrated into decisions or legislative proposals involving a major regulatory action as defined in this part. The Commission interprets the provisions of EPACA as supplemental to its existing authority and as a mandate to view traditional policies and missions in the light of national energy objectives and, if necessary, to change these policies or to seek legislation to promote greater energy conservation and efficiency among the carriers subject to Commission jurisdiction.

(c) These procedures apply only to proceedings started after the effective date of these regulations.

§ 1106.5 Identification of major regulatory actions.

(a) The following classes of actions are major regulatory actions and require preparation of an SEI:

(1) Construction of rail lines (except for connecting tracks);

(2) Merger, control, or consolidations involving two or more class I railroads;

(3) Commuter fair adjustments filed under § 1136.1;

(4) Intercity bus fare adjustments filed under § 1139.20;

(5) Passenger train discontinuance;

(6) Revocation or substantial modification of motor carrier regular-route passenger service;

(7) Abandonment of rail lines;

(8) Certification of water carrier service;

(9) Rulemaking and legislative proposals affecting carrier operations; and

(10) General rate adjustments filed under §§ 1135.1 and 1139.1, as well as similar adjustments affecting modes of transportation not specifically referred to in those parts.

(b) While other commission proceedings may have some energy impact, these impacts are generally not considered to be major. However, if the Commission on its own initiative identifies energy issues of consequence in a proposed action not listed in subparagraph (a) of this section, or if evidence is presented to the Commission indicating that this action may have important energy impacts, an SEI may be prepared.

(c) In determining whether a proposed action not listed in subparagraph (a) of this section constitutes a major regulatory action, consideration will be given to whether the action will:

(1) Substantially increase or decrease energy consumption in comparison with existing energy consumption in the affected area;

(2) Result in substantial diversion of traffic from one mode of transportation to another;

(3) Result in materially more energy efficient or less energy efficient use of existing modes of transportation;

(4) Be consistent with Federal, State, and local plans regarding energy conservation;

(5) Result in material disruption of existing patterns of energy distribution; or

(6) Provide or remove necessary transportation access for the substantial development of energy resources.

§ 1106.6 Preparation of statements of energy impact.

(a) The Commission will prepare the statement of energy impact for all major regulatory actions and include it in the decision or the legislative proposal.

(b) If a proceeding is not investigated by the Commission, a statement of energy impact will not be prepared.

(c) A determination that a proceeding is a major regulatory action within the meaning of EPACA and this part is independent from any determination that the proceeding is a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act of 1969, and vice versa.

§ 1106.7 Reporting requirements.[1]

(a) Every application within § 1106.5(a) shall include information specifically addressing all factors listed in § 1106.5(c) except number (4) and shall provide supporting data to the extent practicable.

(b) For other proceedings before the Commission, the information required in subparagraph (a) of this section shall be provided as follows:

(1) In proceedings involving oral hearings, at these hearings, at the control of the presiding officer; and

(2) In proceedings not involving oral hearings, at the time verified statements or other materials in justification of an application are filed.

(c) These reporting requirements shall not apply to applications for temporary or emergency temporary authority or to other emergency situations where compliance would be impracticable.

(d) Persons filing a protest or other pleading in a proceeding before the Commission may include a statement indicating the probable impact of the proposed action on energy conservation and energy efficiency. A statement alleging that a proposal is a major regulatory action under EPACA and this part shall be accompanied by supporting data, to the extent practicable, indicating the nature and degree of the anticipated energy impact.

§ 1106.8 Decisions.

In addition to the statement of energy impact the decision in a major regulatory action will include findings and conclusions indicating how the energy impacts identified in the SEI were considered in the decision.

PARTS 1107–1109—[RESERVED]

PART 1110—PROCEDURES GOVERNING INFORMAL RULEMAKING PROCEEDINGS

Sec.

1110.1 Applicability.
1110.2 Opening of proceeding.
1110.3 Publication of notices.
1110.4 Participation.
1110.5 Consideration of comments received.
1110.6 Petitions for extension of time to comment.
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1110.10 Petitions for reconsideration.

AUTHORITY: 49 U.S.C. 10321; 5 U.S.C. 552, 553, and 559.

SOURCE: 47 FR 49556, Nov. 1, 1982, unless otherwise noted.

§ 1110.1 Applicability.

This part contains general rulemaking procedures that apply to the issuance, amendment, and repeal of rules, general policy statement, or other interpretation of rules or law of the Interstate Commerce Commission, adopted under the procedures of section 553 of title 5 of the United States Code (the Administrative Procedure Act).

§ 1110.2 Opening of proceeding.

(a) The Commission may open a rulemaking proceeding on its own motion. In doing so, it may consider the recommendations of other agencies of the United States and of other persons.

(b) Any person may petition the Commission to issue, amend, or repeal a rule.

(c) Each petition seeking the institution of a proceeding, filed under this section must:

(1) Be submitted, along with 15 copies if possible, to the Secretary, Interstate Commerce Commission, Washington, DC 20423;

(2) Set forth the text or substance of the rule or amendment proposed or specify the rule that the petitioner wants to have repealed or modified;

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[1] EDITORIAL NOTE: For regulations affecting the reporting requirements in part 1106, see 49 CFR 1105.12.

(3) Explain the interest of the petitioner in the action requested; and

(4) Contain any information and arguments available to the petitioner to support the action sought and may detail any environmental, energy, or small business considerations.

(d) In rail cases, the Commission will grant or deny a petition within 120 days of its receipt.

(e) If the Commission determines that a petition contains adequate justification, it will open a rulemaking proceeding pursuant to § 1110.3 and will notify the petitioner of its action.

(f) If the Commission determines that the petition does not contain adequate justification for opening a rulemaking proceeding, the petition will be denied, with a brief statement of the grounds for denial, and the petitioner will be notified of the Commission's action.

(g) If a petition under this section concerning a common carrier by railroad is granted, the Commission will proceed as soon as it is practicable. If the petition is denied, the Commission will publish a statement of the reasons for the denial in the FEDERAL REGISTER.

§ 1110.3 Publication of notices.

(a) Interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice may be issued as final without notice or other public rulemaking proceedings.

(b) General rulemaking proceedings will be opened by the issuance of either a notice of intent to institute a rulemaking proceeding, an advance notice of proposed rulemaking, or a notice of proposed rules. The Commission will publish the notice in the FEDERAL REGISTER, and it will invite the public to participate in the rulemaking proceeding. No notice will be issued when the Commission finds for good cause, that notice is impractical or unnecessary or contrary to the public interest.

(c) Notices of proposed rulemakings will include:

(1) The proposed rules, if prepared;

(2) A discussion of why the rulemakings are needed and what they are intended to accomplish;

(3) Identification of significant dates in the proceedings, such as dates by which comments must be filed or on which the rules are proposed to take effect;

(4) Any relevant addresses;

(5) The name and phone number of an individual within the Commission who can provide further information concerning the proceedings;

(6) Any supplementary information required; and

(7) Reference to the legal authority under which the rules are proposed.

(d) In addition to being published in the FEDERAL REGISTER, notices of proposed rulemaking and subsequent notices and decisions in rulemaking proceedings, will be served on the parties and made available to the public through the Office of the Secretary. To the extent possible, the date of service will be the same as the date of publication in the FEDERAL REGISTER. When the service and publication dates are not the same, the date of publication in the FEDERAL REGISTER is controlling for the purpose of determining time periods set by these procedures or by notices issued in individual proceedings.

§ 1110.4 Participation.

Any person may participate in rulemaking proceedings by submitting written information or views. In addition, the Commission may invite persons to present oral arguments, participate in informal conferences, appear at informal fact-finding hearings, or participate in any other proceedings. Information contained in written submissions will be given the same consideration.

§ 1110.5 Consideration of comments received.

All timely comments will be considered before final action is taken on a rulemaking proposal. Comments which are filed late will be considered so far as possible without incurring additional expense, delay, or prejudice to other parties.

§ 1110.6 Petitions for extension of time to comment.

(a) Any person may petition the Commission for an extension of time to submit comments in response to a notice of proposed rulemaking. The petition and one copy must be submitted at least 10 days prior to the deadline for filing comments. The filing of the petition does not automatically extend the time for the filing of petitioner's comments.

(b) The Commission will grant the petition only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if the extension is in the public interest. If an extension is granted, notice of it will be published in the FEDERAL REGISTER, and it will apply to all persons.

§ 1110.7 Availability of dockets.

Dockets of pending rulemaking proceedings are maintained in the Office of the Secretary. These dockets are available for inspection by any person, and copies may be obtained upon payment of the prescribed fee.

§ 1110.8 Adoption of final rules.

If, after consideration of all comments received, final rules are adopted, notice will be published in the FEDERAL REGISTER.

§ 1110.9 Petition for waiver.

Any person may petition the Commission for a permanent or temporary waiver of any rule. Petitions should be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423, and should identify the rule involved and the arguments in favor of granting the waiver.

[48 FR 44827, Sept. 30, 1983]

§ 1110.10 Petitions for reconsideration.

Any person may file a petition for reconsideration of the Commission's decision in a rulemaking proceeding. Petitions should be filed within 20 days of the date that the final decision is published in the FEDERAL REGISTER and should identify the interest of the petitioner, the specific action sought, and the arguments favoring that action.

PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

Sec.
1111.1 Content of formal complaints; joinder.
1111.2 Amended and supplemental complaints.
1111.3 Copies; service.
1111.4 Answers and cross complaints.
1111.5 Motions to dismiss or to make more definite.
1111.6 Satisfaction of complaint.
1111.7 Investigations on the Commission's own motion.

AUTHORITY: 49 U.S.C. 10321; 5 U.S.C. 559.

SOURCE: 47 FR 49557, Nov. 1, 1982, unless otherwise noted.

§ 1111.1 Content of formal complaints; joinder.

(a) *General.* A formal complaint must contain the correct, unabbreviated names and addresses of each complainant and defendant. It should set forth briefly and in plain language the facts upon which it is based. It should include specific reference to pertinent statutory provisions and Commission regulations, and should advise the Commission and the defendant fully in what respects these provisions or regulations have been violated. The complaint should contain a detailed statement of the relief requested. Relief in the alternative or of several different types may be demanded, but the issue raised in the formal complaint should not be broader than those to which complainant's evidence is to be directed at the hearing.

(b) *Requests for Oral Hearing.* A formal complaint should include a request that the proceeding be handled either under the modified procedure or at oral hearing, and a request for oral hearing should detail why oral hearing is required and should include at least two alternative hearing sites.

(c) *Multiple causes of action.* Two or more grounds of complaint concerning the same principle, subject, or statement of facts may be included in one complaint, but should be stated and numbered separately.

(d) *Joinder.* Two or more complainants may join in one complaint against one or more defendants if their respective causes of action concern substantially the same alleged violations and like facts.

§ 1111.2 Amended and supplemental complaints.

An amended or supplemental complaint may be tendered for filing by a complainant against a defendant or defendants named in the original complaint, stating a cause of action alleged to have accrued within the statutory period immediately preceding the date of such tender, in favor of complainant and against the defendant or defendants. The time limits for responding to an amended or supplemental complaint are computed pursuant to §§ 1111.4 and 1111.5, as if the amended or supplemental complaint was an original complaint.

§ 1111.3 Copies; service.

Formal complaints, amended or supplemental complaints, and cross complaints will be served by the Commission. The original of each formal complaint, or cross complaint must be accompanied by a sufficient number of copies to enable the Commission to serve one upon each defendant and to retain 10 copies in addition to the original.

[47 FR 49557, Nov. 1, 1982, as amended at 53 FR 19301, May 27, 1988]

§ 1111.4 Answers and cross complaints.

(a) *Generally.* An answer may be filed within the time provided in paragraph (b) of this section. Whether or not an answer is filed and served, the issue is joined at the conclusion of the time for filing answers, and the Commission may then proceed to a decision. In the alternative, the Commission may provide for the taking of evidence under the modified or oral hearing procedures, and in such a case the failure to answer a complaint will not bar a party from further participation in a proceeding or from the presentation of its evidence. An answer should be responsive to the complaint and should fully advise the Commission and the parties of the nature of the defense.

(b) *Time for filing; copies; service.* An answer must be filed within 20 days after the service of the complaint or within such additional time as the Commission may provide. The original and 10 copies of an answer must be filed with the Commission. The defendant must serve copies of the answer upon the complaint and any other defendants.

(c) *Cross complaints.* A cross complaint alleging violations by other parties to the proceeding or seeking relief against them may be filed with the answer. An answer to a cross complaint may be filed within 20 days after the service date of the cross complaint. The party shall serve copies of answer to a cross complaint upon the other parties.

[47 FR 49557, Nov. 1, 1982, as amended at 53 FR 19301, May 27, 1988]

§ 1111.5 Motions to dismiss or to make more definite.

An answer to a complaint or cross complaint may be accompanied by a motion to dismiss the complaint or cross complaint or a motion to make the complaint or cross complaint more definite. A motion to dismiss can be filed at anytime during a proceeding. A complainant or cross complainant may, within 10 days after an answer is filed, file a motion to make the answer more definite. Any motion to make more definite must specify the defects in the particular pleading and must describe fully the additional information or details thought to be necessary.

§ 1111.6 Satisfaction of complaint.

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the complainant must be filed (original only need be filed), setting forth when and how the complaint has been satisfied.

§ 1111.7 Investigations on the Commission's own motion.

(a) *Service of decision.* A decision instituting an investigation on the Commission's own motion will be served by the Commission upon respondents.

(b) *Default.* If within the time period stated in the decision instituting an investigation, a respondent fails to comply with any requirement specified in the decision, the respondent will be deemed in default and to have waived any further proceedings, and the investigation may be decided forthwith.

PART 1112—MODIFIED PROCEDURES

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1112.1 When modified procedure is used.
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1112.4 Petitions to intervene.
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AUTHORITY: 49 U.S.C. 10321; 5 U.S.C. 559.

SOURCE: 47 FR 49558, Nov. 1, 1982, unless otherwise noted.

§ 1112.1 When modified procedure is used.

The Commission may decide that a proceeding be heard under modified procedure when it appears that substantially all material issues of fact can be resolved through submission of written statements, and efficient disposition of the proceeding can be accomplished without oral testimony. Modified procedure may be ordered on the Commission's initiative, or upon approval of a request by any party.

§ 1112.2 Decisions directing modified procedure.

A decision directing that modified procedure be used will set out the schedule for filing verified statements by all parties and will list the names and addresses of all persons who at that time are on the service list in the proceeding. In this part, a statement responding to an opening statement is referred to as a "reply", and a statement responding to a reply is referred to as a "rebuttal". Replies to rebuttal material are not permitted.

§ 1112.3 Default for failure to comply with schedule; effect of default.

If a party fails to comply with the schedule for submission of verified statements, or any other requirements established by the modified procedure decision, that party will be deemed to be in default and to have waived any further participation in the proceeding. Thereafter, the proceeding may be disposed of without notice to and without participation by parties in default.

§ 1112.4 Petitions to intervene.

(a) The Commission may grant a petition to intervene in a proceeding set for modified procedure if intervention:

(1) Will not unduly disrupt the schedule for filing verified statements, except for good cause shown; and

(2) Would not unduly broaden the issues raised in the proceeding.

(b) The petition to intervene shall set out:

(1) The petitioner's interest in the proceeding;

(2) Whether the petitioner supports or opposes the relief sought or the action proposed or is otherwise concerned with the issues presented in the proceeding; and

(3) The petitioner's request, if any, for relief.

(c) Petitions to intervene are not required in investigation proceedings under the modified procedure involving rate-related matters, provided that the substantive requirements of (a) and (b) are met.

§ 1112.5 Joint pleadings.

Parties with common interests are encouraged to prepare joint pleadings whenever possible.

§ 1112.6 Verified statements; contents.

A verified statement should contain all the facts upon which the witness relies, and to the extent that it contains arguments, they should be based only on those facts. Parties filing reply and rebuttal verified statements will be considered to have admitted the truth of material allegations of fact contained in their opponents' statements unless those allegations are specifically challenged. Rebuttal statements shall be confined to issues raised in the reply statements to which they are directed.

§ 1112.7 Records in other Commission proceedings.

If any portion of the record before the Commission in any proceeding other than the proceeding at issue is offered in evidence, a true copy should be presented for the record.

§ 1112.8 Verification.

The original of any pleading filed must show the signature, capacity, and seal, if any, of the person administering the oath, and the date thereof.

§ 1112.9 Sample verification for statement of fact under modified procedure.

State of ———————.
County of ———————.
SS:
——————— being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.
Signed ———————.
Subscribed and sworn to before me this ——— day of ———————.
Notary Public of ———————.
My Commission expires ———————.

§ 1112.10 Requests for oral hearings and cross examination.

(a) *Requests.* Requests for oral hearings in matters originally assigned for handling under modified procedure should be included in the reply or rebuttal statement. The reasons why the matter cannot be properly resolved under modified procedure must be set out in full. Requests for cross examination of witnesses must include the name of the witness and the subject matter of the desired cross examination.

(b) *Disposition.* Unless material facts are in dispute, oral hearings will not be held. If held, oral hearings will normally be confined to material issues upon which the parties disagree. The decision setting a matter for oral hearing will define the scope of the hearing.

§ 1112.11 Authority of officers.

Except to the extent that they apply only to the conduct of a public hearing, the officer assigned to handle a proceeding under the modified procedure shall have the same authority as officers assigned to conduct oral hearings as described in § 1113.3(a) and (b).

PART 1113—ORAL HEARING

Sec.

1113.1 Scheduling hearings; continued hearings.
1113.2 Subpoenas.
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AUTHORITY: 49 U.S.C. 10321; 5 U.S.C. 559.

SOURCE: 47 FR 49559, Nov. 1, 1982, unless otherwise noted.

§ 1113.1 Scheduling hearings; continued hearings.

(a) *Assignment; service and posting of notice.* In those proceedings in which an oral hearing is to be held, the Commission will assign a time and place for hearing. Notice of hearings will be posted in the Office of the Secretary of the Commission and will be served upon the parties and such other persons as may be entitled to receive notice under the Act.

(b) *Requests for changes in assignment.* Requests for postponements of date of hearing will be granted only in exceptional circumstances.

(c) *Continuances.* (1) A continuance may be granted at the descretion of the presiding officer.

(2) If the presiding officer announces the time and place of a continued hearing on the record, no further notice need be given.

(3) A joint board shall not set a date and place for a continued hearing without first consulting the Commission. If consultation with the Commission is impractical, the hearing shall be adjourned by the joint board to such time and place as the Commission subsequently shall determine.

§ 1113.2 Subpoenas.

(a) *Issuance.* A subpoena may be issued upon the direction of the Commission on its own motion or upon request. A subpoena may be issued by the Commission or by the officer presiding at a hearing and must be signed by the Secretary or a member of the Commission.

(b) *Requests.* (1) A request for a subpoena to compel the appearance of a person at a hearing to give oral testimony, but not to produce documents, may be made either by letter (only the original need be filed with the Commission) or orally upon the record at the hearing. A showing of general relevance and reasonable scope of the evidence sought to be introduced through the subpoenaed person may be required.

(2) A request for a subpoena to compel a witness to produce documentary evidence should be made in writing by petition. The petition should specify with particularity the books, papers, or documents desired and facts expected to be proved, and should show the general relevance and reasonable scope of the evidence sought. The officer presiding at a hearing may grant a request for such a subpoena made orally upon the record.

(c) *Service.* The original subpoena should be exhibited to the person served, should be read to him if he is unable to read, and a copy should be delivered to him by the officer or person making service.

(d) *Return.* If service of subpoena is made by a United States marshal or his deputy, service should be evidenced by his return on the subpoena. If made by any other person, such person shall make an affidavit stating the date, time and manner of service; and return such affidavit on, or with, the original subpoena in accordance with the form thereon. In case of failure to make service the reasons for the failure should be stated on the original subpoena. The written acceptance of service of a subpoena by the person subpoenaed will be sufficient without other evidence of return. The original subpoena bearing or accompanied by the required return, affidavit, statement, or acceptance of service, should be returned forthwith to the Secretary of the Commission, unless otherwise directed.

(e) *Witness fees.* A witness who is summoned and responds to the summons is entitled to the same fee as is paid for like service in the courts of the United States. Such fee is to be paid by the party at whose instance the testimony is taken at the time the subpoena is served, except that when the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered at the time of service.

§ 1113.3 Authority of officers.

(a) *General.* (1) The presiding officer has the authority to regulate the procedure in the hearing before him, and has authority to take all measures necessary or proper for the efficient performance of the duties assigned him. These include authority: (i) To hold hearings; (ii) to administer oaths and affirmations; (iii) to grant intervention; (iv) to accept any pleading; (v) to establish special rules of procedure appropriate to the effective handling of the particular proceeding; (vi) to examine witnesses; (vii) to issue subpoenas at the hearing; (viii) to dispose of requests for discovery; (ix) to hold conferences for the settlement and simplification of issues; (x) to rule on motions and dispose of procedural requests; (xi) to make initial decisions; (xii) to exclude any person from the hearing for contemptuous conduct; and (xiii) to take any other action authorized by this part, by the Administrative Procedure Act, or by the Interstate Commerce Act and related acts.

(2) The presiding officer has the authority: (i) To terminate examination or cross-examination of repetitious or

cumulative nature; (ii) to limit direct examination to material matters; (iii) to limit cross-examination to disputed material facts; (iv) to require that principal examination or cross-examination be conducted by one or more counsel representing similar interests in proceedings where several parties are involved; (v) to set reasonable schedules for the presentation of witnesses; (vi) and to set reasonable time limits for the examination or cross-examination of witnesses. In order to enforce this paragraph, the officer may require a clear statement on the record of the nature of the testimony to be given by any witness.

(b) *Motions to dismiss; amendments.* (1) The presiding officer shall have power to decide any motion to dismiss the proceeding or other motion which involves final determination of the merits of the proceeding.

(2) The presiding officer may grant leave to amend any application or complaint except where the tendered amendment would result in such a change in the geographical scope of the proceeding that it would have to be reassigned from an administrative law judge to a joint board, or vice versa.

(c) *Preparation of the decision by the prevailing party.* Any proceeding in which an oral hearing is held and in which the officer is able to announce his decision either:

(1) On the record after the close of the taking of testimony and the hearing of arguments by the officer, or

(2) By appropriate notification to the parties after the close of hearing, may be made the subject of an initial decision prepared by a party or parties in whose favor the officer decides, within a period specified by the officer, and subject to such changes as the officer considers appropriate in the draft prepared for him.

(d) *Recording; media coverage.* The presiding officer shall have authority to permit or to refuse to permit the recording of the hearing by means of live or delayed television or radio broadcast, or the use of a tape recorder or other electronic or photographic equipment by any person other than the official reporter.

§ 1113.4 Prehearing conferences.

(a) *Purposes.* Upon written notice by the Commission in any proceeding, or upon written or oral instruction of an officer, parties or their representatives may be directed to appear before an officer at a specified time and place for a conference, prior to or during the course of a hearing, or in lieu of personally appearing, to submit suggestions in writing, for the purpose of formulating issues and considering:

(1) The simplification of issues;

(2) The necessity or desirability of amending the pleadings either for the purpose of clarification, amplification, or limitation;

(3) The possibility of making admissions of certain averments of fact or stipulations concerning the use by any or all parties of matters of public record, such as annual reports and the like, to avoid the unnecessary introduction of proof;

(4) The procedure at the hearing;

(5) The limitation of the number of witnesses;

(6) The propriety of prior mutual exchange between or among the parties of prepared testimony and exhibits; and

(7) Such other matters, including disposition of requests for discovery, as may aid in the simplification of the evidence and disposition of the proceeding. Parties may request a prehearing conference.

(b) *Facts disclosed privileged.* Facts disclosed in the course of the prehearing conference are privileged and, except by agreement, will not be used against participating parties either before the Commission or elsewhere unless fully corroborated by other evidence.

(c) *Recordation and decision.* Action taken at the conference, including a recitation of the amendments allowed to the pleadings, the agreements made by the parties as to any of the matters considered, and defining the issues, will be recorded in an appropriate decision unless the parties enter into a written stipulation as to such matters, or agree to a statement thereof made on the record by the officer.

(d) *Objection to the decision; subsequent proceedings.* If a decision is entered, the parties may, within 20 days of the date of service, or within such lesser time as is set by the officer, present objections on the grounds that the decision does not fully or correctly embody the agreements reached at the conference. Thereafter the terms of the written stipulation or statement of the officer, as the case may be, will determine the subsequent course of the proceedings, unless modified to prevent manifest injustice.

§ 1113.5 Stipulations.

Apart from the procedure contemplated by the prehearing provisions, the parties may, by stipulation in writing filed with the Commission at any stage of the proceeding, or orally made at the hearing, agree upon any pertinent facts in the proceeding. The parties should agree to facts in this manner whenever practicable.

§ 1113.6 Appearances; withdrawal or absence from hearing.

(a) *Who may appear.* Any individual may appear for himself. Any member of a partnership which is a party to any proceeding may appear for such partnerships upon adequate identification. A bona fide officer or a full-time employee of a corporation, association, or of an individual may appear for such corporation, association, or individual by permission of the officer presiding at the hearing. A party also may be represented by a practitioner.

(b) *Withdrawal or absence from hearing.* A practitioner who has entered his appearance at the hearing shall not be permitted to withdraw from the hearing, or willfully be absent therefrom, except for good cause and, wherever practicable, only with the permission of the presiding officer. If a person who has entered an appearance withdraws from the hearing in a manner other than that specified, the Commission or the Officer may take such action as, in the interest of justice and the protection of the lawful rights of all parties to the proceeding, the circumstances of the case may warrant, including the striking out of all or any part of any pleading of the offending party, and including the possible dismissal of the action or proceeding, or any part thereof, the entry of an order of default against that party, or if the withdrawal is without the permission of the presiding officer, disciplining of the practitioner concerned.

§ 1113.7 Intervention; petitions.

(a) *How requested.* Intervention will normally be granted only upon petition. In exceptional circumstances, where the issues would not be broadened or the proceeding delayed, an officer may, at his or her discretion, allow intervention upon motion made orally at the hearing.

(b) *Content generally.* A petition for leave to intervene must set forth the grounds for the proposed intervention, the position and interest of the petitioner in the proceeding, and whether petitioner's position is in support of or in opposition to the relief sought. If the proceeding is by formal complaint and affirmative relief is sought by petitioner, the petition should conform to the requirements for a formal complaint.

(c) *When filed.* A petition for leave to intervene in any proceeding should be filed prior to or at the time the proceeding is called for hearing, but not after, except for good cause shown.

(d) *Broadening issues; filing.* If the petition seeks a broadening of the issues and shows that they would not thereby be unduly broadened, and in respect thereof seeks affirmative relief, the petition should be filed in time to permit service upon and answer by the parties in advance of the hearing.

(e) *Copies; service; replies.* When a petition for leave to intervene is tendered at the hearing, sufficient copies of the petition must be provided for distribution to the parties represented at the hearing. If leave is granted at the hearing, 10 copies of the petition must be furnished for the use of the Commission. When a petition for leave to intervene is not tendered at the hearing, the original and 10 copies of the petition should be submitted to the Commission together with a certificate that service has been made by petitioner. Any reply in opposition to a petition for leave to intervene not tendered at the hearing must be filed within 20 days after service of the petition to intervene. At the discretion of the Commission leave to intervene may be granted or denied before the expiration of the time allowed for replies.

(f) *Disposition.* Leave to intervene will be granted only when the petitioner addresses issues reasonably pertinent to the issues already presented and which do not unduly broaden them. If leave is granted the petitioner becomes an intervener and a party to the proceeding.

[47 FR 49559, Nov. 1, 1982, as amended at 53 FR 19301, May 27, 1988]

§ 1113.8 Witness examination; order of procedure.

Witnesses will be orally examined under oath before the officer unless the facts are presented to the Commission in the manner provided under modified procedure. In formal complaint, application, and investigation proceedings, complainant, applicant, and respondent, respectively, shall open and close at the hearing. In the event of further hearings granted on petition, the petitioners requesting further hearing shall open and close the proceeding. Instances exist in which parties other than the respondent may open and close in investigations where the burden of proof is not upon the respondent. Interveners shall follow the party in whose behalf the intervention is made. The foregoing order of presentation may be varied by the officer.

§ 1113.9 Prepared statements.

With the approval of the officer, a witness may read into the record, as his testimony, statements of fact or expressions of opinion prepared by the witness, or written answers to interrogatories of counsel. A prepared statement of a witness who is present at the hearing may be received as an exhibit, provided that the statement does not include argument. Before any such statement is read or admitted in evidence, the witness shall deliver to the officer, the reporter, and to opposing counsel, as may be directed by the officer, a copy of such statement or of such interrogatories and the written answers thereto. The admissibility of the evidence contained in such statement will be subject to the same rules as if such testimony was produced orally, including the right of cross-examination of the witness. The officer may require that the witness testify orally if, in the officer's opinion, the memory or demeanor of the witness may be of importance.

§ 1113.10 Records in other Commission proceedings.

A portion of the record before the Commission in another proceeding may be offered in evidence at an oral hearing. A party making such an offer must provide, as an exhibit, a certified copy of the material sought to be introduced. A hearing officer may waive the requirement that a copy be provided, subject to such conditions as he or she may impose to assure that a copy will be available later, if needed, at no expense to the Commission and to assure that the interests of other parties are not prejudiced. An offer of evidence under this section will be subject to objection by other parties.

§ 1113.11 Abstracts of documents.

When documents, such as freight bills or bills of lading, are numerous, the officer may refuse to receive all the documents and in evidence instead admit only a limited number of representative documents. He may instruct, if the proffer be for the purpose of proving damage, that introduction be deferred until there is opportunity to comply with § 1133.2. If the proffer be for another purpose the officer may require the party in orderly fashion to abstract the relevant data from the documents, affording other parties reasonable opportunity to examine both the documents and the abstract, and thereupon offer such abstract in evidence in exhibit form.

§ 1113.12 Exhibits.

(a) *Copies.* Unless the officer otherwise directs, the original and 10 copies of each exhibit of a documentary character should be furnished for the use of the Commission. The original will be delivered to the reporter, and the copy to the officer. If the hearing is before a board, a copy of the exhibit should be furnished to each member of the board, unless the board otherwise directs. Unless the officer for cause directs otherwise, a reasonable number of copies should be furnished to counsel in attendance at the hearing.

(b) *Interchange prior to hearing.* Whenever practicable, the parties should interchange copies of exhibits or other pertinent material or matter before or at the commencement of the hearing; and the Commission or presiding officer may so direct.

(c) *When excluded how treated.* When exhibit has been identified, objected to, and excluded, the officer will develop whether the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it should be given an exhibit number for identification and be incorporated in the record. Exhibit numbers once used for identification will not be duplicated thereafter.

[47 FR 49559, Nov. 1, 1982, as amended at 53 FR 19301, May 27, 1988]

§ 1113.13 Filing evidence subsequent to hearing; copies.

Except as provided in this section or as expressly may be permitted in a particular instance, the Commission will not receive in evidence or consider as part of the record any documents, letters, or other writings submitted for consideration in connection with any proceeding after close of the hearing, and may return any such documents to the sender. Before the close of a hearing the officer may, at the request of a party or upon his own motion, or upon agreement of the parties, require that a party furnish additional documentary evidence that supplements the existing record, within a stated period of time. Documentary evidence to be furnished in this way will be given an exhibit number at the time of filing and the parties advised accordingly. Unless otherwise directed by the officer, the original and 10 copies of such submission should be filed with the Commission.

[47 FR 49559, Nov. 1, 1982, as amended at 53 FR 19301, May 27, 1988]

§ 1113.14 Objections to rulings.

It is sufficient that a party, at the time the ruling is made or sought, make known to the officer on the record the action which he desires the officer to take or his objection to the action of the officer and his grounds for that objection. An objection not pressed in brief will be considered as waived. Where no brief is filed an objection will be considered as waived if not pressed in an appeal or reply to an appeal, if filed, or in a separate petition dealing only with that objection.

§ 1113.15 Interlocutory appeals.

Rulings of the presiding officer may be appealed prior to service of the initial decision only if:

(a) The ruling denies or terminates any person's participation,

(b) The ruling grants a request for the inspection of documents not ordinarily available for public inspection,

(c) The ruling overrules an objection based on privilege, the result of which ruling is to require the presentation of testimony or documents, or

(d) The presiding officer finds that the ruling may result in substantial irreparable harm, substantial detriment to the public interest, or undue prejudice to a party.

§ 1113.16 Oral argument before the hearing officer.

At the discretion of the hearing officer and upon reasonable notice to the parties, oral argument may be made at the close of testimony before him as an alternative to the filing of written briefs. Such argument, which should include requested findings and conclusions, will be recorded and made a part of the transcript of testimony, and will be available to the Commission for consideration in deciding the case. The making of such argument will not preclude oral argument before the Commission.

§ 1113.17 Transcript of record.

(a) *Filing.* After the close of the hearing, the complete transcript of the testimony taken and the exhibits shall be part of the record in the proceeding.

(b) *Corrections.* A suggested correction in a transcript ordinarily will be considered only if offered not later than 20 days after the date each transcript is filed with the Commission. A copy of the letter (original only need be filed with the Commission) requesting the suggested corrections should be served upon all parties of record and with 2 copies to the official reporter.

(c) *Objections to corrections.* Parties disagreeing with corrections suggested pursuant to paragraph (b) of this section should file written objections in the same manner as suggested corrections are to be filed. Objections to suggested corrections should be filed not later than 15 days after the filing with the Commission of suggested corrections. If no objections are timely filed, the Secretary of the Commission shall make the suggested corrections to the transcript. If objections are timely filed, the officer who presided at the hearing shall determine the merits of the suggested correction and enter an appropriate decision in the proceeding.

(d) *No free copies.* The Commission will not furnish free copies of the transcript to any party to any proceeding.

§ 1113.18 Briefs.

(a) *When filed.* In a proceeding which has been the subject of oral hearing, and in which briefs are to be filed, that fact will be stated by the officer on the record. The officer shall fix the time for filing briefs. Simultaneous filing will normally be required, and reply briefs will not normally be permitted.

(b) *Evidence abstract.* A brief filed after a hearing may contain an abstract of the evidence relied upon by the party filing it, preferably assembled by subjects, with reference to the pages of the record, if written, or exhibit where the evidence appears. In the event the party elects not to include a separate abstract in his brief, he should give specific reference to the portions of the record, whether transcript or otherwise, relied upon in support of the respective statements of fact made throughout the brief.

(c) *Requested findings.* Each brief should include such requests for specific findings, separately stated and numbered, as the party desires the Commission to make.

(d) *Exhibit reproduction.* Exhibits should not be reproduced in the brief, but may be shown, within reasonable limits, in an appendix to the brief. Analysis of such exhibits should be included in the brief where pertinent.

§ 1113.19 Pleadings: part of the record.

Matters of fact that are verified and filed prior to oral hearing and that are not specifically denied constitute evidence and are part of the record. A witness, who would present such evidence, must be made available for cross-examination if a request is reasonably made. This rule does not apply to protest against tariffs or schedules.

§§ 1113.20—1113.30 [Reserved]

§ 1113.31 Joint boards.

(a) *Organization.* After a joint board has been established according to 49 U.S.C. 10342 et seq., it will select one of its members to act as chairman. If the person selected as chairman is absent from a meeting, the members attending shall select a temporary substitute chairman for that meeting.

(b) *Waiver of action by absence of a joint board.* If a joint board member fails to participate in a hearing after notice of the hearing, the failure to participate acts as a waiver of action on the part of the State from which the member was appointed.

(c) *Procedural ruling by chairman in case of disagreement.* If the members of a joint board or a majority of the board attending a hearing cannot agree upon the disposition of a procedural question arising at the hearing, the chairman, or acting chairman, shall decide the question.

(d) *Form of joint board's decision; service.* The board's decision will conform as nearly as possible to the form of decisions issued by the Commission. The board's decision will be served by the Commission.

(e) *Termination of joint board jurisdiction and subsequent procedure.* The jurisdiction of a joint board over a referred matter will terminate when the decision of the joint board is served by the Commission. Joint board jurisdiction also may be terminated by Commission decision, and it will terminate if:

(1) The board's conclusions are submitted without a written decision;

(2) Each state entitled to appoint a member waives action in writing from the appropriate state authority;

(3) All of the members of the board fail to appear at the hearing;

(4) A majority of the board fails to agree on substantive matters; or

(5) The board fails to act in accordance with 49 U.S.C. 10343(d)(2).

When jurisdiction of the joint board has been terminated without a decision by the board due to the reasons stated in paragraphs (e)(1) through (4) of this section, the Commission or a designated officer will enter a decision based upon the record, if any, made before the board or after further hearings, if required.

PART 1114—EVIDENCE; DISCOVERY

Subpart A—General Rules of Evidence

Sec.
1114.1 Admissibility.
1114.2 Official records.
1114.3 Admissibility of business records.
1114.4 Documents in Commission's files.
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Subpart B—Discovery

1114.21 Applicability; general provisions.
1114.22 Deposition.
1114.23 Depositions; location, officer, time, fees, absence, disqualification.
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1114.29 Supplementation of responses.
1114.30 Production of documents and records and entry upon land for inspection and other purposes.
1114.31 Failure to respond to discovery.

AUTHORITY: 49 U.S.C. 10321; 5 U.S.C. 559.

SOURCE: 47 FR 49562, Nov. 1, 1982, unless otherwise noted.

Subpart A—General Rules of Evidence

§ 1114.1 Admissibility.

Any evidence which is sufficiently reliable and probative to support a decision under the provisions of the Administrative Procedure Act, or which would be admissible under the general statutes of the United States, or under the rules of evidence governing proceedings in matters not involving trial by jury in the courts of the United States, will be admissible in hearings before the Commission. The rules of evidence will be applied in any proceeding to the end that necessary and proper evidence will be conveniently, inexpensively, and speedily produced, while preserving the substantial rights of the parties.

§ 1114.2 Official records.

An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by a deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office. A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of this office contain no such record or entry. This section does not prevent the proof of official records or of entry or lack of entry therein or official notice thereof by a method authorized by any applicable statute or by the rules of evidence.

§ 1114.3 Admissibility of business records.

Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, will be admissible as evidence thereof if it appears that it was made in the regular course of business, and that it was the regular course of business to make such memorandum or record at the time such record was made, or within a reasonable time thereafter.

§ 1114.4 Documents in Commission's files.

If a party offers in evidence any matter contained in a report or other document open to public inspection in the files of the Commission, such report or other document need not be made available at the hearing.

§ 1114.5 Records in other Commission proceedings.

If any portion of the record before the Commission in any proceeding other than the proceeding at issue is offered in evidence, a true copy will be presented for the record.

§ 1114.6 Official notice of corroborative material.

The Commission or a hearing officer may take notice of official records, records in other Commission proceedings, or other materials which are otherwise subject to specific rules governing admissibility regardless of compliance with the full technical provisions of such rules, where the admissibility of the evidence is for purposes of corroboration of testimony presented or to evaluate the credibility of testimony or allegations made in proceedings where the public interest is not otherwise adequately represented by counsel capable of fully complying with such rules.

§ 1114.7 Exhibits.

(a) *Generally.* Whenever practical the sheets of each exhibit and the lines of each sheet should be numbered. If the exhibit consists of five or more sheets, the first sheet or title-page should be confined to a brief statement of what the exhibit purports to show with reference by sheet and line to illustrative or typical examples contained therein. The exhibit should bear an identifying number, letter, or short title which will readily distinguish it from other exhibits offered by the same party. It is desirable that, whenever practicable, evidence should be condensed into tables. Whenever practicable, especially in proceedings in which it is likely that many documents will be offered, all the documents produced by a single witness should be assembled and bound together, suitably arranged and indexed, so that they may be identified and offered as one exhibit. Exhibits should not be argumentative and should be limited to statements of facts, and be relevant and material to the issue, which can better be shown in that form than by oral testimony.

(b) *Reference to tariff authority, routes, and distances.* All exhibits showing rates, fares, charges, or other tariff or schedule provisions must, by appropriate Interstate Commerce Commission number reference, indicate the tariff or schedule authority therefor. If distances are shown, they must also show the authority therefor, and, by lines, highways, or waterways, and junction points, the routes over which the distances are computed. The routes over which the distances are computed need not be shown when such distances are specifically published in a tariff or schedule lawfully on file with the Commission, or definitely ascertainable from a tariff or schedule on file with the Commission showing rates prescribed by the Commission and based on short line distances, or short-highway distances, provided the exhibit makes specific reference to such tariff or schedules as provided by this section.

Subpart B—Discovery

§ 1114.21 Applicability; general provisions.

(a) *When discovery is available.* (1) Parties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding. For the purpose of this subchapter, informal proceedings are those not required to be determined on the record after hearing and include informal complaints and all proceedings assigned for initial disposition to employee boards (except the review boards) under § 1011.6.

(2) It is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b) *How discovery is obtained.* (1) In non-rail licensing proceedings governed by 49 CFR part 1160, no discovery procedures may be used unless the Commission, upon its own motion or upon verified petition of a party, shall have entered a decision approving discovery.

(2) In other proceedings other than those governed by 49 CFR part 1160, those discovery procedures providing for the service of written interrogatories and requests for admissions (§§ 1114.26 and 1114.27) may be used by parties without filing a petition and obtaining prior Commission approval. The other discovery procedures may be used only when the Commission, upon its own motion or upon verified petition of a party, has entered a decision approving discovery.

(3) Whenever possible a petition for discovery must be filed in sufficient time to allow for the filing of replies and for consideration by the Commission without requiring the postponement of any hearing or the submission of initial statements under modified procedure. Use of discovery in those circumstances where no petition is required must also be accomplished whenever possible without requiring any such postponement.

(c) *Protective conditions.* Upon motion by any party, by the person from whom discovery is sought, or by any person with a reasonable interest in the data, information, or material sought to be discovered and for good cause shown, any order which justice requires may be entered to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding. Relief through a protective order may include one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time and place;

(3) That the discovery may be had only upon such terms and conditions as the Commission may impose to insure financial responsibility indemnifying the party or person against whom discovery is sought to cover the reasonable expenses incurred;

(4) That the discovery may be had only by a method other than that selected by the party seeking discovery;

(5) That certain matters not be inquired into or that the scope of discovery be limited to certain matters;

(6) That discovery be conducted with no one present except persons designated in the protective order;

(7) That a deposition after being sealed be opened only by order of the Commission;

(8) That a trade secret or other confidential research development or commercial information not be disclosed or be disclosed only in a designated way; and

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened only upon direction or order of the Commission.

If the motion for a protective order is denied in whole or in part, the Commission may, on such terms and conditions as it deems just, enter an order requiring any party or person to provide or permit discovery. A protective order under this paragraph may only be sought after, or in conjunction with, an effort by any party to obtain relief under §§ 1114.24(a), 1114.26(a), or 1114.31.

(d) *Sequence and timing of discovery.* Unless the Commission upon motion, for the convenience of parties and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, should not operate to delay any party's discovery.

(e) *Stipulations regarding discovery.* Unless otherwise ordered, a written stipulation entered into by all the parties and filed with the Commission may:

(1) Provide that depositions be taken before any person, at any time or place, upon sufficient notice, and in any manner and when so taken may be used like other depositions; and

(2) Modify the procedures provided by these rules for other methods of discovery.

§ 1114.22 Deposition.

(a) *Purpose.* The testimony of any person, including a party, may be taken by deposition upon oral examination.

(b) *Petition.* The petition requesting an order to take a deposition and perpetuate testimony or to produce documents and materials:

(1) Should set forth the facts it desires to establish and the substance it expects to elicit;

(2) Should be served upon all parties to the proceeding and upon the person sought to be deposed and/or the custodian of the documents or materials sought to be produced;

(3) Should set forth the name and address of the witness, the place where, the time when, the name and office of the officer before whom, and the cause or reason why such deposition should be taken; and

(4) Should specify with particularity the documents and materials which the deponent is requested to produce.

(c) *Order.* If the Commission is convinced on its own initiative or by the petition requesting an order to take a deposition that the deposition will prevent a failure or delay of justice, it will serve an order upon the parties and the witness, naming the witness whose deposition is to be taken, specifying the time when, the place where, and the officer before whom the deposition is to be taken, and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The provisions for the taking of the deposition specified in the Commission's order may or may not be the same as requested in the petition. The deposition may then be taken in accordance with these rules, and the Commission may make orders of the character provided by § 1114.31.

§ 1114.23 Depositions; location, officer, time, fees, absence, disqualification.

(a) *Where deposition should be taken.* Unless otherwise ordered or agreed to by stipulation, depositions should be taken in the city or municipality where the deponent is located.

(b) *Officer before whom taken.* Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions should be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. Within a foreign country, depositions may be taken before an officer or person designated by the Commission or agreed upon by the parties by stipulation in writing to be filed with the Commission.

(c) *Fees.* A witness whose deposition is taken pursuant to these rules and the officer taking same, unless he be employed by the Commission, shall be entitled to the same fee paid for like service in the courts of the United States, which fee should be paid by the party at whose instance the deposition is taken.

(d) *Failure to attend or to serve subpoena; expenses.* (1) If the party who filed a petition for discovery fails to attend and proceed with the taking of the deposition and another party attends in person or by representative pursuant to an order of the Commission granting discovery the Commission may order the party who filed the petition to pay to such other party the reasonable expenses incurred by him and his representative in so attending, including reasonable attorney's fees.

(2) If the party who filed a petition for discovery fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by representative because he expects the deposition of the witness to be taken, the Commission may order the party who filed the petition to pay to such other party the reasonable expenses incurred by him and his representative in so attending, including reasonable attorney's fees.

(e) *Disqualification for interest.* No deposition should be taken before a person who is a relative or employee or representative or counsel of any of the parties, or is a relative or employee of such representative or counsel or is financially interested in the proceeding.

§ 1114.24 Depositions; procedures.

(a) *Examination.* Examination and cross-examination of witnesses should proceed as permitted at a hearing and should be limited to the subject matter specified in the order granting discovery. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, should be noted by the officer upon the deposition. Evidence objected to should be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and shall transmit them to the officer, who shall open the sealed envelope, propound the questions to the witness, and record the answers verbatim.

(b) *Use of depositions.* At the hearings, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of a public or private corporation, partnership, association or governmental agency (other than this Commission, except in those instances where the Commission itself is a party to the proceeding) which is a party, may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer or Commission finds:

(i) That the witness is dead; or

(ii) That the witness is at a greater distance than 100 miles from the place of hearing or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(iii) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witness orally at public hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts. Substitution of parties does not affect the right to use depositions previously taken.

(c) *Effect of taking or using depositions.* A party should not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this should not apply to the use of an adverse party of a deposition under paragraph (b)(2) of this section. At the hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(d) *Motions to protect.* At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Commission may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in § 1114.21(c). If the order made terminates the examination, it should be resumed thereafter only if so ordered. Upon demand of the objecting party or deponent, the taking of the deposition should be suspended for the time necessary to make a motion for an order.

(e) *Recordation.* The officer before whom the deposition is to be taken shall observe the provisions of § 1113.6 respecting appearances and typographical specifications, shall put the witness under oath, and shall personally, or by someone acting under his direction and in his presence, record and transcribe the testimony of the witness as required by these rules.

(f) *Signing.* When the testimony is fully transcribed or otherwise recorded, the deposition should be submitted to the witness for examination and should be read to or by him unless such examination and reading are waived by the witness and the parties. Any changes in form or substance which the witness desires to make should be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The witness shall then sign the deposition, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 15 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used fully as though signed, unless, on a motion to suppress, it is found that the reasons given for refusal to sign require rejection of the deposition in whole or in part.

(g) *Attestation.* The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness, and that the officer is: (1) Not a relative, employee, representative or counsel of any of the parties, (2) not a relative or employee of such representative or counsel, and (3) not financially interested in the proceeding.

(h) *Return.* The officer shall securely seal the deposition in an envelope endorsed with sufficient information to identify the proceeding and marked "Deposition of (here insert name of witness)" and shall either personally deliver or promptly send the original and one copy of all exhibits by registered mail to the Secretary of the Commission. A deposition to be offered in evidence must reach the Commission not later than 5 days before the date it is to be so offered.

(i) *Notice.* The party taking the deposition shall give prompt notice of its filing to all other parties.

(j) *Copies.* Upon payment of reasonable charges, the officer before whom the deposition is taken shall furnish a copy of it to any interested party or to the deponent.

§ 1114.25 Effect of errors and irregularities in depositions.

(a) *As to disqualification of officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(b) *As to taking of deposition.* (1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(c) *As to completion and return of deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under § 1114.23 and 1114.24 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

§ 1114.26 Written interrogatories to parties.

(a) *Availability; procedures for use.* Subject to the provisions of § 1114.21(b)(2), any party may serve upon any other party written interrogatories to be answered by the party served, or if the party served is a public or private corporation, partnership, association, or Governmental agency (other than this Commission, except in those instances where the Commission itself is a party to the proceeding), by any officer or agent, who shall furnish such information as is available to the party. Copies of any interrogatories served, and answers thereto, should also be filed with the Commission. Each interrogatory should be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection should be stated in lieu of an answer. The answers are to be signed by the person making them and subscribed by an appropriate verification generally in the form prescribed in § 1112.9. Objections are to be signed by the representative or counsel making them. The person upon whom the interrogatories have been served shall serve a copy of the answers and objections within the time period designated by the party submitting the interrogatories, but not less than 15 days after the service thereof.

(b) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies thereof, or compilation, abstracts, or summaries therefrom. If information sought is contained in computer runs, punchcards, or tapes which also contain privileged or proprietary information or information the disclosure of which is proscribed by the act, it will be sufficient response under these rules that the person upon whom the interrogatory has been served is willing to make available to and permit an independent professional organization not interested in the proceeding and paid by the party serving the interrogatory to extract from such runs, punchcards, or tapes the information sought in the interrogatory that is not privileged or proprietary information or information the disclosure of which is proscribed by the act.

(c) *Service of interrogatories in those proceedings not requiring a petition.* In those proceedings not requiring a petition for interrogatories, and unless under special circumstances and for good cause, no written interrogatories shall be served within 20 days prior to the date assigned for commencement of hearing or the filing of opening statements of fact and argument under the modified procedure, and when the written interrogatories are to be served in a foreign country, they shall not be served within 40 days prior to such date.

§ 1114.27 Request for admission.

(a) *Availability; procedures for use.* Subject to the provisions of § 1114.21(b)(2), a party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any matters within the scope of § 1114.21 set forth in the request, including the genuineness of any documents described in the request for admission. Copies of documents should be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Copies of any requests for admission served, and answers thereto, should also be filed with the Commission. Each matter of which an admission is requested should be separately set forth. The matter is admitted unless, within a period designated in the request, not less than 15 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or his representative or counsel. If objection is made, the reasons therefor should be stated. The answer should specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial should fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request; he may, subject to the provisions of § 1114.31, deny the matter or set forth reasons why he cannot admit or deny it. Copies of any answers or objections should be filed with the Commission.

(b) *Effect of admission.* Any matter admitted under this rule is conclusively established unless upon petition and a showing of good cause the Commission enters an order permitting withdrawal or amendment of the admission. Any admission made by a party under this rule is for the purpose of the pending proceeding only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

(c) *Service of written requests for admission in those proceedings not requiring a petition.* In those proceedings not requiring a petition for requests for admission, and unless under special circumstances and for good cause shown, no requests for admission should be served within 20 days prior to the date assigned for commencement of hearing or the filing of opening statements of fact and argument under the modified procedure, and when requests for admission are to be served in a foreign country they should not be served within 40 days prior to such date.

§ 1114.28 Depositions, requests for admission, written interrogatories, and responses thereto: inclusion in record.

At the oral hearing, or upon the submission of statements under the modified procedure, depositions, requests for admission and written interrogatories, and respective responses may be offered in evidence by the party at whose instance they were taken. If not offered by such party, they may be offered in whole or in part by any other party. If only part of a deposition, request for admission or written interrogatory, or response thereto is offered in evidence by a party, any other party (where the matter is being heard orally) may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts. Such depositions, requests for admission and written interrogatories, and responses thereto should be admissible in evidence subject to such objections as to competency of the witness, or competency, relevancy, or materiality of the testimony as were noted at the time of their taking or are made at the time they are offered in evidence.

§ 1114.29 Supplementation of responses.

A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement his response to include information thereafter acquired in the following instances:

(a) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to:

(1) The identity and locations of persons having knowledge of discoverable matters, and

(2) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify, and the substance of his testimony.

(b) A party who knows or later learns that his response is incorrect is under a duty seasonably to correct his response.

(c) A duty to supplement responses may be imposed by order, agreement of the parties, or at any time prior to the hearing or the submission of verified statements under the modified procedure through new requests for supplementation of prior responses.

§ 1114.30 Production of documents and records and entry upon land for inspection and other purposes.

(a) *Scope.* Any party may be ordered and directed:

(1) To produce and permit the petitioning party to inspect any designated documents (including writings, drawings, graphs, charts, photographs, phonograph records, tapes, and other data compilations from which information can be obtained, translated, if necessary, with or without the use of detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which are in the possession, custody, or control of the party upon whom the order is served, but if the writings or data compilations (including computer runs, punchcards, and tapes) include privileged or proprietary information or information the disclosure of which is proscribed by the act, such writings or data compilations need not be produced under this rule but may be provided pursuant to § 1114.26(b); or

(2) To permit, subject to appropriate liability releases and safety and operating considerations, entry upon designated land or other property in the possession or control of the party upon whom the order is served for the purpose of inspecting and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.

(b) *Procedure.* Any petition filed pursuant to this rule should set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The petition should specify a reasonable time, place, and manner of making the inspection and performing the related acts.

§ 1114.31 Failure to respond to discovery.

(a) *Failure to answer.* If a deponent fails to answer or gives an evasive answer or incomplete answer to a question propounded under § 1114.24(a), or a party fails to answer or gives evasive or incomplete answers to written interrogatories served pursuant to § 1114.26(a), the party seeking discovery may apply for an order compelling an answer by motion filed with the Commission and served on all parties and deponents. Such motion to compel an answer must be filed with the Commission and served on all parties and deponents. Such motion to compel an answer must be filed with the Commission within 10 days after the failure to obtain a responsive answer upon deposition, or within 10 days after expiration of the period allowed for submission of answers to interrogatories. On matters relating to a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(b) *Failure to comply with order.* (1) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the Commission, such refusal may subject the refusing party or person to action by the Commission under 49 U.S.C. 10321(c)(3) and (d)(4) to compel appearance and compliance with the Commission's order.

(2) If any party or an officer, director, managing agent, or employee of a party or person refuses to obey an order made under paragraph (a) of this section requiring him to answer designated questions, or an order made under § 1114.30 requiring him to produce any document or other thing for inspection, copying, testing, sampling, or photographing or to permit it to be done, or to permit entry upon land or other property, the Commission may make such orders in regard to the refusal as are just, and among others the following:

(i) An order that the matters regarding which questions were asked, or the character or description of the thing or land, or the contents of the paper, or any other designated facts should be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order:

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony:

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the proceedings or any party thereof.

(c) *Expenses on refusal to admit.* If a party, after being served with a request under § 1114.27 to admit the genuineness of any document or the truth of any matter of fact, serves a sworn denial thereof, and if the party requesting the admission thereafter proves the genuineness of any such document or the truth of any such matter of fact the Commission may order the party making such denial to pay to such other party the reasonable expenses incurred in making that proof, including reasonable attorney's fees.

(d) *Failure of party to attend or serve answers.* If a party or a person or an officer, director, managing agent, or employee of a party or person willfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under § 1114.26, after proper service of such interrogatories, the Commission on motion and notice may strike out all or any part of any pleading of that party or person, or dismiss the proceeding or any part thereof.

(e) *Expenses against United States.* Expenses and attorney's fees are not to be imposed upon the United States under this rule.

PART 1115—APPELLATE PROCEDURES

Sec.

1115.1 Scope of rule.
1115.2 Initial decisions.
1115.3 Commission actions other than initial decisions.
1115.4 Petitions to reopen administratively final actions.
1115.5 Petitions for other relief.
1115.6 Exhaustion of remedies and judicial review.
1115.7 Petitions for judicial review; mailing address.
1115.8 Petitions to review arbitration decisions.

AUTHORITY: 49 U.S.C. 10321, 10322, and 10377; 5 U.S.C. 559.

SOURCE: 47 FR 49568, Nov. 1, 1982, unless otherwise noted.

§ 1115.1 Scope of rule.

(a) These appellate procedures apply in cases where a hearing is required by law or Commission action. They do not apply to informal matters such as car service, temporary authority, suspension, special permission actions, or to other matters of an interlocutory nature except as specifically provided below. Except as provided in paragraph (c) of this section, these procedures do not apply to appeals from decisions of individual Commission employees in purely procedural matters made pursuant to authority delegated to them by the Chairman of the Commission. (See 49 CFR part 1152) Abandonment and discontinuance proceedings instituted under 49 U.S.C. 10903 are governed by separate appellate procedures exclusive to those proceedings. (See 49 CFR part 1152)

(b) Requests for appellate relief may relate either to initial decisions or to Commission actions other than initial decisions. For each category, this rule describes the types of appeal permitted, the requirements to be observed in filing an appeal, provisions for stay of the action, and the status of the action in the absence of a stay.

(c) Appeals from the decisions of employees acting under authority delegated to them by the Chairman of the Commission pursuant to § 1011.7 will be acted upon by the Chairman of the Commission. Appeals must be filed within 10 days of the date of the action taken by the employee, and responses to appeals must be filed within 10 days thereafter. Such appeals are not favored; they will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.

§ 1115.2 Initial decisions.

This category includes the initial decision of an administrative law judge, individual Commissioner, employee board, or joint board.

(a) An appeal of right is permitted.

(b) Appeals must be based on one or more of the following grounds:

(1) That a necessary finding of fact is omitted, erroneous, or unsupported by substantial evidence of record;

(2) That a necessary legal conclusion, or finding is contrary to law, Commission precedent, or policy;

(3) That an important question of law, policy, or discretion is involved which is without governing precedent;

(4) That prejudicial procedural error has occurred.

(c) Appeals must detail the assailed findings with supporting citations to the record and authorities.

(d) Appeals and replies shall not exceed 30 pages in length, including argument, and appendices or other attachments, but excluding a table of cases and an index of subject matter.

(e) Appeals must be filed within 20 days after the service date of the decision or within any further period (not to exceed 20 days) the Commission may authorize. In proceedings seeking motor carrier operating authority replies must be filed within 15 days of the date the appeal is due. In all other proceedings covered by these rules, replies must be filed within 20 days of the date the appeal is due.

(f) The timely filing of an appeal to an initial decision will stay the effect of the action pending determination of the appeal.

(g) If an appeal of an initial decision is not timely filed or the Commission does not stay the effectiveness on its own motion, the order set forth in the initial decision shall become the action of the Commission and be effective at the expiration of the time for filing, unless otherwise provided.

[47 FR 49568, Nov. 1, 1982, as amended at 54 FR 19894, May 9, 1989]

§ 1115.3 Commission actions other than initial decisions.

This category includes: a decision of a division in the first instance, where the requirement for an initial decision was voided (for rail proceedings pursuant to 49 U.S.C. 10327(c)) or waive (for nonrail proceedings pursuant to 49 U.S.C. 10322(c)); an action of the entire Commission in the first instance; and an action taken by a division on an appeal filed under § 1115.2.

(a) A discretionary appeal is permitted. It will be designated a "petition for administrative review," except that, when it is related to an action of the entire Commission in the first instance, it must be designated a "petition to reopen."

(b) The petition will be granted only upon a showing of one or more of the following points:

(1) The prior action (all categories) will be affected materially because of new evidence or changed circumstances.

(2) The prior action was taken by a division in the first instance or by a division in an appellant capacity, and involves a matter of general transportation importance.

(3) The prior action was taken by the entire Commission in the first instance, and involves material error.

(c) To the extent the petition requests further hearing, rehearing, reargument, or reconsideration, the petition must state in detail the nature of and reasons for the relief requested. When in a petition filed under this section, a party seeks an opportunity to introduce evidence, the evidence must be stated briefly, must not appear to be cumulative, and explanation must be given why it was not previously adduced.

(d) The petition and any reply must not exceed 20 pages in length. A separate preface and summary of argument, not exceeding 3 pages, may accompany petitions and replies and must accompany those that exceed 10 pages in length.

(e) Petitions must be filed within 20 days after the service of the action or within any further period (not to exceed 20 days) as a division or the Commission may authorize. In proceedings seeking motor carrier authority replies must be filed within 15 days of the date the appeal is due. In all other proceedings covered by these rules, replies must be filed within 20 days of the date the appeal is due.

(f) The filing of a petition will not automatically stay the effect of a prior action, but the Commission may stay the effect of the action on its own motion or on petition. A petition to stay may be filed in advance of the petition for administrative review or petition to reopen and shall be filed within 10 days of service of the action. No reply need be filed. However, if a party elects to file a reply, it must reach the Commission no later than 16 days after service of the action.

(1) In a rail proceeding, the action, if not stayed, will become effective 30 days after it is served, unless the acting body provides for the action to become effective at a different date. On the day the action is served parties may initiate judicial review.

(2) In a nonrail proceeding, the action, if not stayed, will be effective on the date it is served, and parties may initiate judicial review.

(3) In all final actions, the provisions of the action will take effect on the date of service, unless otherwise provided. On this date parties must comply with the terms, conditions, or orders of the effective decision.

(49 U.S.C. 10321, 5 U.S.C. 553; 5 U.S.C. 553 and 49 U.S.C. 10305)

[47 FR 49568, Nov. 1, 1982, as amended at 48 FR 44827, Sept. 30, 1983; 49 FR 31071, Aug. 3, 1984]

§ 1115.4 Petitions to reopen administratively final actions.

A person at any time may file a petition to reopen any administratively final action of the Commission pursuant to the requirements of § 1115.3(c) and (d) of this part. A petition to reopen an operating rights application proceeding must state in detail information sufficient to establish either fraud or ministerial mistake in the earlier decision. A petition to reopen all other proceedings must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances and must include a request that the Commission make such a determination.

§ 1115.5 Petitions for other relief.

(a) A party may petition for a stay of an action pending a request for judicial review, for extention of the compliance date, or for modification of the date the terms of the decision take effect. The reasons for the desired relief must be stated in the petition, and the petition must be filed not less than 10 days prior to the date the terms of the action take effect. No reply need be filed. If a party elects to file a reply, the reply must reach the Commission no later than 5 days after the petition is filed.

(b) When the terms of a Commission action take effect on less than 15 days' notice, a petition for stay pending a request for judicial review must be filed prior to the institution of court action and as close to the service date as practicable. No reply need be filed. Where time permits, a party may elect to file a reply.

(c) A petition or reply must not exceed 10 pages in length.

§ 1115.6 Exhaustion of remedies and judicial review.

These rules do not relieve the requirement that a party exhaust its administrative remedies before going to court. Any action appealable as of right must be timely appealed. If an appeal, discretionary appeal, or petition seeking reopening is filed under § 1115.2 or § 1115.3 of this part, before or after a petition seeking judicial review is filed with the courts, the Commission will act upon the appeal or petition after advising the court of its pendency unless action might interfere with the court's jurisdiction.

§ 1115.7 Petitions for judicial review; mailing address.

Petitions for judicial review of final agency orders may be served on the Commission pursuant to 28 U.S.C. 2112(a) and be addressed to "General Counsel, Office of the General Counsel, Interstate Commerce Commission, Washington, DC 20423."

[53 FR 20854, June 7, 1988]

§ 1115.8 Petitions to review arbitration decisions.

An appeal of right is permitted. The appeal must be filed within 20 days of a final arbitration decision, unless a later date is authorized by the Commission, and is subject to the page limitations of § 1115.2(d). Standards for Commission review of arbitration decisions are set forth in *Chicago and North Western Transp. Co.—Abandonment*, 3 I.C.C.2d 729 (1987), *aff'd sub nom. International Brotherhood of Electrical Workers* v. *ICC*, No. 87-1629 (D.C. Cir. November 25, 1958). The timely filing of a petition will not automatically stay the effect of the arbitration decision. A stay may be requested under § 1115.5.

[54 FR 19894, May 9, 1989]

PART 1116—ORAL ARGUMENT BEFORE THE COMMISSION

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1116.1 Requests.

(a) *Addressee.* Requests for oral argument should be addressed to the Secretary, Interstate Commerce Commission, Washington, DC 20423.

(b) *Who may request?* Any party may submit a written request for oral argument and state the reasons for the request. No replies from other parties to the request shall be made.

(c) *When to file a request.* Requests for oral argument should be filed within 20 days after the date of service of the decision, order, or requirement being appealed, unless the Commission by order prescribes a different time period.

(d) *Granting of request.* The Commission will rule upon requests by decision, and the granting of requests is entirely at the discretion of the Commission.

[47 FR 49569, Nov. 1, 1982]

§ 1116.2 Manner of presentation.

Proponents of a rule or order will be heard first, and opponents will be heard second. One counsel only will usually be heard for each of the opposing interests, unless additional presentations are specifically authorized.

[47 FR 49569, Nov. 1, 1982]

PART 1117—PETITIONS (FOR RELIEF) NOT OTHERWISE COVERED

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1117.1 Petitions.

A party seeking relief not provided for in any other rule may file a petition for such relief. The petition should contain (a) a short, plain statement of the grounds upon which the Commission's jurisdiction is based; (b) a short plain statement of the claim showing that the petitioner is entitled to relief; and (c) a demand for the relief the petitioner believes is appropriate.

[47 FR 49569, Nov. 1, 1982]

PART 1118—PROCEDURES IN INFORMAL PROCEEDINGS BEFORE CERTAIN EMPLOYEE BOARDS

Sec.
1118.1 Scope.
1118.2 Proceedings to be informal.
1118.3 Service of special permission applications.
1118.4 Appeals.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

Source: 47 FR 49569, Nov. 1, 1982, unless otherwise noted.

§ 1118.1 Scope.

The rules in this part govern proceedings before the Operations Boards, the Special Permission Board, the Released Rates Board, the Accounting and Valuation Board, the Tariff Rules Board, the Special Docket Board, the Tariff Integrity Board, and the Regional Motor Carrier Boards. Special rules, located elsewhere in this part, should be consulted.

[47 FR 49569, Nov. 1, 1982, as amended at 48 FR 13047, Mar. 29, 1983]

§ 1118.2 Proceedings to be informal.

The proceedings in all matters governed by this part will be informal. No transcript of these proceedings will be made. Subpoenas will not be issued and, except when applications, petitions, or statements are required to be attested, oaths will not be administered.

§ 1118.3 Service of special permission applications.

A special permission application requesting authority to change, cancel, or reissue tariff matter under suspension or continued in effect as a result of suspension should be simultaneously served on all parties to the investigation and suspension proceeding, and should include a certificate of service to that effect.

§ 1118.4 Appeals.

(a) *Standing to appeal.* Appeals of the decisions of the employee boards subject to this part and replies to appeals may be filed by any person.

(b) *Number of copies.* The original and 10 copies of each pleading or paper permitted or required to be filed under this section should be furnished for the use of the Commission.

(c) *Time for filing.* Except as provided in paragraph (e) of this section with respect to matters involving emergency temporary authority, appeals in proceedings governed by this part must be filed within 20 days after the date of service of the decision.

(d) *Where filed.* Appeals of decisions of a Regional Motor Carrier Board and replies to appeals should be filed with the regional office issuing the decision. All other appeals and replies to appeals should be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

(e) *Appeals in emergency temporary authority proceedings.* An applicant seeking reconsideration of a decision concerning emergency temporary authority must file a petition within 20 days after it is notified of the decision on the application. Any other interested person seeking reconsideration of a decision granting emergency temporary authority may file a petition at any time during the life of the authority. Replies may be filed within 15 days after the filing of the petition. Pleadings must be served on all parties of record.

(f) *Appeals in valuation proceedings.* An appeal of a tentative valuation must contain precise references to the matters objected to and must include a statement of the changes in the valuation desired by the appellant. When practicable, each object of appeal should be set up as a separately numbered item. An appeal against land values or areas must state the valuation section and zone on the Commission's maps in which the land is located. When appellant claims that property owned or used has been omitted, a full description of the property and its location must be included.

(g) *Decisions on appeal.* An appeal from an employee board's initial decision in a matter subject to this part will be reviewed by the board which may elect to modify its decision in light of new facts or arguments presented on appeal. If the board elects not to modify its prior decision, the appeal will be forwarded to the appropriate appellate body for determination. If a modified decision is issued by the board, a further appeal lies under this part. A decision on appeal by an appellate body is administratively final.

(49 U.S.C. 10321 and 10928; 5 U.S.C. 559)

[47 FR 49569, Nov. 1, 1982, as amended at 48 FR 13047, Mar. 29, 1983; 48 FR 51628, Nov. 10, 1983; 53 FR 19301, May 27, 1988]

PART 1119—COMPLIANCE WITH COMMISSION DECISIONS

AUTHORITY: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1119.1 Compliance.

A defendant or respondent directed by the Commission to do or desist from doing a particular thing must notify the Commission on or before the compliance date specified in the decision of the manner of compliance. Notification should be by verified affidavit showing simultaneous service upon all parties to the proceeding. Where a change in rates or schedules is directed, notification specifying the Interstate Commerce Commission tariff or schedule numbers must be given in addition to the filing of proper tariffs or schedules.

[47 FR 49570, Nov. 1, 1982]

PART 1120—USE OF 1977-1978 STUDY OF MOTOR CARRIER PLATFORM HANDLING FACTORS

AUTHORITY: 49 U.S.C. 10321, 10701, and 10706.

§ 1120.1 Scope.

The provisions of this part apply only to Class I and II motor common carriers of general freight subject to accounting instruction number 27 of the Commission's Uniform System of Accounts (49 CFR Part 1207).

[47 FR 36184, Aug. 19, 1982. Redesignated at 47 FR 49570, Nov. 1, 1982]

§ 1120.2 Purpose.

In any proceeding requiring the development of platform handling times for distribution of platform expense, carriers may use the results of the national weight formula contained in the Commission's study, *entitled 1977-1978 Motor Carrier Platform Study*, Statement 2S1-79.

[47 FR 36184, Aug. 19, 1982. Redesignated at 47 FR 49570, Nov. 1, 1982]

PARTS 1121-1129—[RESERVED]

PARTS 1130-1149—RATE PROCEDURES

PART 1130—INFORMAL COMPLAINTS

AUTHORITY: 49 U.S.C. 10321 and 10707; 5 U.S.C. 553 and 559.

§ 1130.1 When no damages sought.

(a) *Form and content; copies.* Informal complaint may be by letter or other writing and will be serially numbered as filed. The complaint must contain the essential elements of a formal complaint as specified at 49 CFR 1131.1 and may embrace supporting papers. The original and one copy must be filed with the Commission.

(b) *Correspondence handling.* When an informal complaint appears susceptible of informal adjustment, the Commission will send a copy or statement of the complaint to each subject of the complaint in an attempt to have it satisfied by correspondence, thereby avoiding the filing of a formal complaint.

(c) *Discontinuance of informal proceeding.* The filing of an informal complaint does not preclude complainant from filing a formal complaint. If a formal complaint is filed, the informal proceeding will be discontinued.

[47 FR 49570, Nov. 1, 1982, as amended at 48 FR 44827, Sept. 30, 1983]

§ 1130.2 When damages sought.

(a) *Actual filing required.* Notification to the Commission that an informal complaint may or will be filed later seeking damages is not a filing within the meaning of the statute except as provided in paragraph (e) of this section.

(b) *Content.* An informal complaint seeking damages must be filed within the statutory period, and should identify with reasonable definiteness the involved shipments or transportation services. The complaint should include:

(1) A statement that complainant seeks to recover damages;

(2) The names of each individual seeking damages;

(3) The names and addresses of defendants against which claim is made;

(4) The commodities, the rate applied, the date on which the charges were paid, the names of the parties paying the charges, and, if different, the names of the parties bearing the charges;

(5) The period of time within which or the specific dates upon which the shipments were made, and the dates when they were delivered or tendered for delivery;

(6) The specific origin and destination points or, where they are numerous, the territorial or rate group of the origin and destination points and, if known, the routes of movement; and

(7) The nature and amount of the injury sustained by each claimant.

(c) *Statement of prior claim.* A complaint filed under paragraph (b) or (e) of this section containing a claim which has been the subject of a previous informal or formal complaint must specifically refer to the previous complaint.

(d) *Copies.* The original of an informal complaint seeking damages must be accompanied by a sufficient number of copies to enable the Commission to send one to each defendant named.

(e) *Special-docket proceedings*—(1) *Petitions based on damages.* Where the Act provides for an award of damages for a violation, and a carrier is willing to pay them, or to waive collection of undercharges, and the amount involved is more than $25,000.00, petitions for appropriate authority should be filed by the carrier on the special docket by submitting either a Letter of Intent to Pay Reparations, a Letter of Intent to Pay Reparations and Waive Undercharges, or a Letter of Intent to Waive Undercharges. Such petitions, when not filed in connection with an Informal Complaint pending before the Commission, must be filed within the statutory period and will be deemed the equivalent of an informal complaint and an answer admitting the matters stated in the petition. These petitions shall contain, as a minimum, the following information:

(i) The names and addresses of the complainants seeking damages.

(ii) The names of the defendants against which the claim is filed.

(iii) The amount of the claim.

(iv) The tariff authority for both the assailed and the sought rate.

(v) The dates on which, or within which, the shipments moved and, when necessary to show compliance with the statute of limitations, the dates when the shipments were delivered or tendered for delivery.

(vi) The points of origin and destination of the shipments and the routes of movement.

(vii) The commodity.

(viii) An admission by the carrier that the assailed rate was unreasonable, and a showing, where appropriate, that it has been removed from the tariff.

(ix) A statement certifying that all defendants against which the claim is lodged concur in the intent to pay reparations or waive undercharges.

(x) Evidence to show compliance with the statute of limitations.

(xi) A brief explanation of the circumstances causing the claim for damages and the precedent relied upon by the carrier in agreeing to honor it.

If a carrier is unable to file such petition within the statutory period and the claim is not already protected from the operation of the statute by informal complaint, a Letter of Registration setting forth the facts may be submitted by the carrier within the statutory period. This letter will also be deemed the equivalent of an informal complaint filed on behalf of the shipper or consignee and sufficient to stay the operation of the statute. However, an appropriate Letter of Intent must be filed within one year following receipt by the Commission of the Letter of Registration. If an amount to be waived or refunded is $25,000.00 or less, no petition (Letter-of-Intent) need be filed prior to waiver or reparation. However, a Letter of Disposition informing the Commission of the action taken, the date of the action, the amount waived or refunded, and the date or dates shipments moved shall be submitted to the Special Docket Board, Interstate Commerce

Commission, Washington, DC 20423, within 30 days of the waiver or refund. The Letter of Disposition is deemed to be Commission action on a complaint for payment of reparations or waiver of undercharges. Letters of Disposition will be kept in a public file at the Commission for three years. Interested persons may see the file by inquiring at the Special Docket Board, Bureau of Traffic, during normal working hours of the Commission.

(2) *Petitions to waive collection of insignificant amounts.* If a rail carrier wishes to waive the collection of amounts due under 49 U.S.C. 10707(d)(2), when such amounts are more than $25,000.00, a petition for appropriate authority should be filed by the carrier on the special docket by submitting a Letter of Intent to Waive Insignificant Amounts. These petitions should contain the following information:

(i) The name and address of the customer for whom the carrier wishes to waive collection.

(ii) The name and addresses of the carriers involved in the intended waiver and a statement certifying that all carriers concur in the action.

(iii) The amount intended to be waived.

(iv) The number of the investigation and suspension case involved, the beginning and ending dates of the suspension period, and any other pertinent tariff information.

(v) The points of origin and destination of the shipments and the routes of movement, if relevant.

(vi) A brief statement of justification for the intended waiver, including the anticipated costs of billing, collecting and/or litigating if the waiver is not permitted.

If the amount to be waived is $25,000.00 or less, no petition need be filed prior to waiver, provided that this exemption may be invoked by a carrier only once for any person (as defined at 49 U.S.C. 10102(16)) who uses the suspended rate during the suspension period. However, a Letter of Disposition informing the Commission of the action taken, the date of the action, and the amount waived shall be submitted to the Special Docket Board, Interstate Commerce Commission, Washington, DC 20423, within 30 days of the waiver.

(3) *Public Notice and Protest.* Petitions on the Special Docket to pay reparations, waive the collection of undercharges or waive the collection of insignificant amounts shall be made available by the Commission for public inspection five (5) days after receipt, in the Board of Suspension Public File Room, Room 4339, 12th & Constitution Avenue, NW., Washington, DC 20423 and remain available for 25 days. Any interested person may protest the granting of a petition by filing a Letter of Objection with the Special Docket Board within 30 days of Commission receipt of the petition. Letters of Objection shall identify the Special Docket number, shall clearly state the reasons for the objection, and shall certify that a copy of the Letter of Objection has been served on all parties named in the petition. A period of 15 days will be allowed for reply.

(4) *Uncontested petitions.* A petition which is not contested will be considered an order of the Commission authorizing the action contemplated in the petition 45 days after Commission receipt of the petition. Within 30 days after the expiration of the 45-day period the carrier filing the petition shall file a Letter of Disposition informing the Special Docket Board of the action taken, the date of the action, and the amount paid or waived.

(f) *Notification to the parties; six month's rule.* If an informal complaint seeking damages (other than a contested Special-docket petition) cannot be disposed of informally or is denied or withdrawn by complainant, the parties affected will be so notified in writing by the Commission. Contested Special-docket petitions either will be granted or denied by the entry of a decision. Unless within six months after the date on which a notice is mailed or a decision is served, a party either files a formal complaint or resubmits its informal complaint on an additional-fact basis, the matter in the complaint or petition will not be reconsidered. The claim will be considered abandoned and no complaint seeking damages on the same cause of action will be accepted unless filed within the statutory period. Any filing or resubmission satisfying the six months' requirement will be considered filed as of the date of the original filing and must specifically refer to that date and to the Commission's file number. An original and 10 copies of a petition for reconsideration should be filed.

[47 FR 49570, Nov. 1, 1982, as amended at 50 FR 15901, Apr. 23, 1985; 51 FR 5713, Feb. 18, 1986; 52 FR 26479, July 15, 1987; 53 FR 19301, May 27, 1988]

PART 1131—FORMAL RATE COMPLAINTS, RAIL INTRASTATE PETITIONS AND INVESTIGATIONS

Sec.
1131.1 Content.
1131.2 When damages sought.
1131.3 [Reserved]
1131.4 Railroad allegations of unlawful intrastate rates.
1131.5 Other specifications.
1131.6 Multiple causes of action; joinder.
1131.7 Amended and supplemental formal complaints.
1131.8 Copies; service.
1131.9 Answers and cross complaints.
1131.10 Motions to dismiss or to make more definite.
1131.11 Satisifaction of complaint.

AUTHORITY: 49 U.S.C. 10321 and 11701; 5 U.S.C. 559.

SOURCE: 47 FR 49572, Nov. 1, 1982, unless otherwise noted.

§ 1131.1 Content.

(a) *General.* A formal complaint must contain the correct, unabbreviated names and addresses of each complainant and defendant. It should set forth briefly and in plain language the facts upon which it is based. It should include specific reference to pertinent statutory provisions and Commission regulations, and should advise the Commission and the defendant fully in what respects these provisions or regulations have been or are violated or will be violated. The complaint should contain a detailed statement of the relief requested. Relief in the alternative or of several different types may be demanded, but the issues raised in the formal complaint should not be broader than those to which complainant's evidence is to be directed at the hearing.

(b) *Requests for oral hearing.* A formal complaint should include a request that the proceeding be handled either under the modified procedure or at oral hearing, and a request for oral hearing should include at least two alternative hearing sites.

§ 1131.2 When damages sought.

(a) *Content.* A formal complaint that includes a request for an award of damages should set forth the information required to be contained in an informal complaint seeking damages (§ 1130.2(b) and (c)).

(b) *Specific request for damages.* Except under unusual circumstances, and for good cause shown, damages will not be awarded upon a complaint unless specifically requested or upon a new complaint by or for the same complainant which is based upon any finding in the original proceeding.

(49 U.S.C. 10321; 5 U.S.C. 553)

[47 FR 49572, Nov. 1, 1982, as amended at 48 FR 44827, Sept. 30, 1983]

§ 1131.3 [Reserved]

§ 1131.4 Railroad allegations of unlawful intrastate rates.

(a) *Actions under 49 U.S.C. 11501(c).* A rail carrier may file a petition with the Commission to review the decision of any certified State authority in any administrative proceeding in which the lawfulness of an intrastate rate, classification, rule, or practice is determined. The petition must show in what way the standards and procedures applied by the State were not in accordance with Subtitle IV of Title 49 of the United States Code, and it must be served on the State authority and all parties to the proceedings before the State authority consistent with § 1104.12. Replies must be filed within 10 days after a carrier petition is filed, and must also be served. The Commission will act on the petition within 30 days.

(b) *Actions under 49 U.S.C. 11501(d).* A rail carrier may file an application with the Commission to prescribe an intrastate rate if the appropriate State authority fails to act within 120 days after the rail carrier filed with it a change in an intrastate rate, or a change in a classification, rule or practice that has the effect of changing an intrastate rate, to the level charged on similar traffic moving in interstate or foreign commerce. The application must include a copy of the change as filed with the State authority, the comparable interstate rate items, and a showing that the State authority failed to act within 120 days. The petition must be served on the State authority and all parties to the proceeding before the State authority consistent with § 1104.12.

§ 1131.5 Other specifications.

(a) *Tariff or schedule references.* A formal complaint that brings in issue any rate, fare, charge, schedule, classification, regulation or practice should specifically identify the pertinent tariff or schedule.

(b) *References to States in which transportation occurs.* A formal complaint under subchapter II of chapter 105 of 49 U.S.C. should specifically name the States in and through which the transportation which gives rise to the complaint is performed.

§ 1131.6 Multiple causes of action; joinder.

(a) *Multiple causes of action.* Two or more grounds of complaint concerning the same principle, subject, or facts may be included in one complaint, but should be stated and numbered separately.

(b) *Multiple complainants.* Two or more complainants may join in one complaint against one or more defendants if their respective causes of action concern substantially the same alleged violation of the Act and like facts.

(c) *Defendants.* If complaint is made with respect to through transportation by continuous carriage or shipment, all persons subject to the Act participating therein, and against which a decision is sought, should be made defendants. If complaint is made regarding a classification or any of its provisions, ordinarily it will suffice to make defendants the persons operating one or more through routes between representative points of origin and destination, and serve notice of filing the complaint upon the tariff agent for the railroads which are subscribers to the tariff containing the challenged classification.

§ 1131.7 Amended and supplemental formal complaints.

An amended or supplemental complaint may be tendered for filing by a complainant against a defendant or defendants named in the original complaint, stating a cause of action alleged to have accrued within the statutory period immediately preceding the date of such tender, in favor of complainant and against the defendant or defendants. The time limits for responding to an amended or supplemental complaint are computed pursuant to §§ 1111.4 and 1111.5, as if the amended or supplemental complaint was an original complaint.

§ 1131.8 Copies; service.

Formal complaints amended or supplemental complaints, and cross complaints will be served by the Commission. The original of each complaint or cross complaint must be accompanied by a sufficient number of copies to enable the Commission to serve one upon each defendant and to retain 10 copies in addition to the original.

[47 FR 49572, Nov. 1, 1982, as amended at 53 FR 19302, May 27, 1988]

§ 1131.9 Answers and cross complaints.

(a) *Generally.* An answer may be filed within the time provided in paragraph (b) of this section. Whether or not an answer is filed and served, issue is joined at the conclusion of the time for filing answers, and the Commission may than proceed to a decision. In the alternative, the Commission may then proceed to a decision. In the alternative, the Commission may provide for the taking of evidence under the modified or oral hearing procedures, and in such a case the failure to answer a complaint will not bar a party from further participating in a proceeding or from the presentation of its evidence. An answer should be responsive to the complaint and should fully advise the Commission and the parties of the nature of the defense.

(b) *Time for filing; copies: service.* An answer must be filed within 20 days after the service of the complaint or within such additional time as the Commission may provide. The original and 10 copies of an answer must be filed with the Commission. The defendant must serve copies of the answer upon the complainant and any other defendants.

(c) *Cross complaints.* A cross complaint alleging violations by parties to the proceeding or seeking relief against them may be filed with the answer. An answer to a cross complaint may be filed within 20 days after the service date of the cross complaint. The party shall serve copies of answer to a cross complaint upon the other parties.

[47 FR 49572, Nov. 1, 1982, as amended at 53 FR 19302, May 27, 1988]

§ 1131.10 Motions to dismiss or to make more definite.

An answer to a complaint or cross complaint may be accompanied by a motion to dismiss the complaint or cross complaint or a motion to make the complaint or cross complaint more definite. A motion to dismiss can be filed at anytime during a proceeding. A complainant or a cross complainant may, within 10 days after an answer is filed, file a motion to make the answer more definite. Any motion to make more definite must specify the defects in the particular pleading and must describe fully the additional information or details thought to be necessary.

§ 1131.11 Satisfaction of complaint.

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the opposing parties must be filed (original only need be filed), setting forth when and how the complaint has been satisfied. This action should be taken as expeditiously as possible.

PART 1132—PROTESTS AGAINST TARIFFS; PROCEDURES IN CERTAIN SUSPENSION AND LONG AND SHORT HAUL RESTRICTION MATTERS

AUTHORITY: 49 U.S.C. 10321, 10707, 10708, and 10726; 5 U.S.C. 553 and 559.

§ 1132.1 Protests against tariffs.

(a) *Content.* The protested tariff or schedule sought to be suspended should be identified by making reference to: The name of the publishing carrier, household goods freight forwarder, or agent; the Interstate Commerce Commission number; the specific items or particular provisions protested; and the effective date of the tariff or schedule. Reference should also be made to the tariff or schedule, and the specific provisions proposed to be superseded. The protest should state the grounds in support thereof, indicate in what respect the protested tariff or schedule is considered to be unlawful. Such protests will be considered as addressed to the discretion of the Commission. Should a protestant desire to proceed further against a tariff or schedule which is not suspended, or which has been suspended and the suspension vacated, a separate later formal complaint or petition should be filed.

(b) *When filed.* Protests against, and requests for suspension of, tariffs, or schedules filed under the Act will not be considered unless made in writing and filed with the Commission at Washington, DC. Protests and requests for suspension shall reach the Commission at least 12 days (except as provided in paragraphs (c), (g), and (j) of this section) before the effective dates of the tariffs, schedules, or parts thereof to which they refer, unless the protested publications were filed on less than 30 days' notice in which even the protests (except as provided in paragraph (g) of this section) must reach the Commission not less than 5 days before the effective dates. Protests or petitions for investigation and suspension of tariffs filed on less than 10 days' notice will be accepted, *Provided* That they reach the Suspension

Board not later than 9:00 a.m. on the last workday before the tariffs' scheduled effective date. Appeals from decisions by the Suspension Board not to suspend or not to investigate matters in which the protests reached the Board later than 9 a.m. on the second working day before the protested tariffs' scheduled effective date will not be accepted. In an emergency, telegraphic protests will be acceptable if received within the time limits herein specified, provided they also fully comply with paragraphs (a) and (g) of this section and copies are immediately telegraphed by protestants to the proponent carriers or their publishing agents. However, protests against and requests for suspension of tariffs applicable on household goods as defined in 49 CFR 1056.1(b)(1), when published for the account of household goods carriers as defined in 49 CFR 1056.1(b)(1), when published for the account of househould goods carriers as defined in 49 CFR 1056.1(b)(1) on not less than 45 days' notice, must reach the Commission no later than 27 days before the effective dates of the tariffs, schedules, or parts thereof to which they refer. Six copies of such telegrams should immediately be mailed by the protestants to the Commission at Washington.

(c) *Motor carrier tariff bureau filings.* When motor common carrier tariff bureaus file schedules of proposed general increases in rates and charges, or of proposed rate restructurings subject to the special procedures adopted in Ex Parte No. MC-82, *New Procedures in Motor Carrier Rev. Proc.* 340 I.C.C. 1 (1971), and set forth at 49 CFR part 1139, protests thereto must reach the Commission at least 22 days before the published effective dates of those schedules. All statements should be served by express mail or an equivalent expedited delivery service upon any party undertaking to bear the cost. Written request for this expedited service must be made no less than 5 days before the statement is due to be filed with the Commission.

(d) *Copies; service.* In connection with proceedings involving proposals subject to the special procedures in Ex Parte No. MC-82, *New Procedures in Motor Carrier Rev. Proc.* 339 I.C.C. 324, and set forth at 49 CFR part 1139, an original and 10 copies of every protest or reply filed under this section should be furnished for the use of the Commission. Except as provided for proposals subject to the special procedures in Ex Parte No. MC-82, the original and 10 copies of each protest, except as provided in paragraph (e) of this section, or of each reply filed under this section, must be filed with the Commission, and one copy of the protest simultaneously must be served upon the publishing carrier, household goods freight forwarder, or agent, and upon other persons known by protestants to be interested. If in the publication of an agency tariff, the proponent carrier elects to list itself with its full address on the cover page of the supplement or new tariff, service shall be made on such carrier simultaneously with service upon the Commission. These pleadings should be directed to the attention of the Suspension Board.

(e) *Passenger fare increases.* The original only of each protest or request for investigation and suspension of increased passenger fares need be filed with the Commission. Requests for suspension of charges in rail passenger fares must include a verified (notarized) complaint.

(f) *Reply to protest.* A reply to a protest filed under this section must reach the Commission not later than the fourth working day prior to the scheduled effective date of the protested schedules unless otherwise provided. Replies to protests against motor carrier rate bureau proposals other than proposals affecting tariffs for the transportation of household goods as defined in § 1056.1(a) subject to Ex Parte No. MC-82 procedures to be assured of consideration, must reach the Commission no later than 14 days before the scheduled effective date of the protested schedules. Replies to protests against tariffs applicable on household goods (as defined in § 1056.1(a)), published for the account of household goods carriers (as defined in § 1040.2(b)) on not less than 45 days' notice shall be filed with the Commission not more than 5 days after the protest is filed. Replies to protests against motor common carrier of passengers general increase proposals subject to Ex Parte No. MC-82 procedures filed on not less than 30 days' notice must reach the Commission not later than the second working day prior to the effective date of the protested schedules.

(g) *Special requirements for protests against revisions to rail rates and charges and replies thereto.* (1) Protests against, and requests for suspension of, tariffs or schedules filed by rail carriers, or their publishing agents on 20 days' notice under the provisions of 49 U.S.C. 10762(c)(3) must reach the Commission at least 10 days before the proposed effective date of the protested matter. When the protested matter is filed on 10 days' notice under the provisions of 49 U.S.C. 10762(c)(3), the protest or requests for suspension must reach the Commission at least 5 days before the proposed effective date of the protested matter.

(2) Protests against and requests for suspension of, tariffs or schedules containing proposed rates, classifications, rules, or practices filed by rail carriers or their publishing agents shall also include a verified statement containing specific facts showing:

(i) It is substantially likely that the protestant will prevail on the merits pursuant to any applicable provisions of the law;

(ii) Without suspension, the proposed rate change will cause substantial injury to the protestants or the party represented by the protestants; and

(iii) Because of the peculiar economic circumstances of the protestant, investigation of the rate (subject to a refund by the carrier should the rate subsequently be found unlawful) will not protect the protestant. The burden is on the protestant to prove the matters described in paragraphs (g)(2), (i), (ii) and (iii) of this section.

(3) Where protestants allege that a rate is unreasonably high in violation of 49 U.S.C. 10701, they must submit evidence relating to market dominance pursuant to guidelines established in Ex Parte No. 320 (Sub-No. 2), 365 I.C.C. 118.

(4) Replies to verified statements filed under this section shall be verified.

(h) Except in extraordinary circumstances, the Suspension Board will act on protests against or requests for suspension of tariffs applicable on household goods as defined in 49 CFR 1056.1(a), when published for the account of household goods carriers as defined in § 1040.2(b) on not less than 45 days' notice, no later than 18 days before the effective dates of the tariffs, schedules, or parts thereof to which they refer. When the Commission acts initially on questions of investigation and suspension of tariffs applicable on household goods published for the account of household goods carriers and filed on not less than 45 days' notice, the Commission will act not later than 12 days before the tariffs' scheduled effective date. If the Commission concludes: Not to investigate and suspend; to investigate, but not to suspend; or not to investigate (without suspension), its decision will not be subject to petitions for reconsideration, except at the Commission's discretion. (A petition to discontinue an investigation will be accepted if filed within 20 days of the service date of the decision ordering the investigation.) No petition other than a petition for discontinuance of an investigation will be accepted that does not reach the Commission by 4:00 p.m. as provided in paragraph (i) of this section.

(i) Except in extraordinary circumstances, the Commission will act on protests or requests for suspension of tariffs filed under paragraph (c) of this section no later than 5 days before the effective date of the tariffs, schedules, or parts thereof to which the protests refer. A decision at the suspension level by the entire Commission on the protests will not be subject to petitions for reconsideration, except at the Commission's discretion. No petition will be accepted that does not reach the Commission by 4:00 p.m. (United States Standard Time or local Daylight Saving Time, whichever is in effect in Washington, DC) on the work-day following the Commission's action.

(j) *Motor carriers of passengers filings.* When motor common carriers of passengers file schedules of proposed general increases in rates and charges subject to the special procedures adopted in Ex Parte No. MC-82 (Sub-No. 1), *Procedures in Motor Carrier Revenue Proceedings—Intercity Bus Industry,* 357 I.C.C. 35 (1977) and set forth at 49 CFR Part 1139, protests thereto must reach the Commission at least 8 days before the proposed effective date of the protested matter.

[47 FR 49573, Nov. 1, 1982, as amended at 51 FR 6237, Feb. 21, 1986; 51 FR 44297, Dec. 9, 1986; 52 FR 32800, Aug. 31, 1987; 53 FR 19302, May 27, 1988]

§ 1132.2 Procedures in certain suspension and long and short haul restriction matters.

(a) The proceedings of the Suspension Board will be informal. No transcriptions of such proceedings will be made. Subpoenas will not be issued and, except when applications or petitions are required to be attested, oaths will not be administered.

(b) Petitions for reconsideration of the following may be filed by any interested person within 20 days after the date of service:

(1) Decisions by the Suspension Board which result in orders for:

(i) Investigation and suspension of tariff schedules;

(ii) Investigation (without suspension) of tariff schedules;

(iii) Granting, withholding, or denying relief from the long and short haul restriction provisions of 49 U.S.C. 10726;

(2) Decisions by an Appellate Division reversing, changing or modifying previous determinations by the Suspension Board and which result in orders for:

(i) Investigation and suspension of tariff schedules;

(ii) Investigation (without suspension) of tariff schedules;

(iii) Granting, withholding, or rescinding relief from the long and short haul restriction provisions of 49 U.S.C. 10726;

(3) Decisions by the Commission or a Division which result in orders for:

(i) Investigation and suspension of tariff schedules;

(ii) Investigation (without suspension) of tariff schedules;

(iii) Granting, modifying, or rescinding relief from the long and short haul restriction provisions of 49 U.S.C. 10726;

See also § 1115.5. In connection with proceedings involving proposals subject to the special procedures in Ex Parte No. MC-82, *New Procedures in Motor Carrier Rev. Proc.* 339 I.C.C. 324, and set forth at 49 CFR Part 1139, and original and 10 copies of every protest or reply filed under this section should be furnished for the use of the Commission. Except as provided for proposals subject to the special procedures in Ex Parte No. MC-82, the original and 10 copies of every pleading, document or paper filed under this section must be furnished for the use of the Commission. Any interested person may file and serve a reply to any petition for reconsideration permitted under this paragraph within 20 days after the filing of such petition with the Commission but if the facts stated in any such petition discloses a need for accelerated action, such action may be taken before expiration of the time allowed for reply. In all other respects, such petitions and replies thereto will be governed by the rules of general applicability of the Rules of Practice.

(c) When the Suspension Board has declined to suspend a proposed tariff or schedule, or any part thereof, a petition in writing by any protestant or protestants may be filed with the Commission for reconsideration provided it reaches the Commission at least two work-days prior to the effective date of the tariff or schedule in question. However, when the Suspension Board has declined to suspend a protested change in rail rates filed on 10 days' notice under the provisions of 49 U.S.C. 10762(c)(3), the petition must be in the hands of the Suspension Board not later than 9 a.m., United States Standard or local Daylight Saving, whichever is in effect in Washington, D.C., on the work-day before the proposed effective date of the protested matter. Further, when the Suspension Board has declined to suspend a proposed tariff or schedule applicable on household goods as defined in § 1056.1(a) published for the account of a household goods carrier as defined in § 1040.2(b) on not less than 45 days' notice, the petition must be filed within 2 work-days after the Suspension Board has acted. For the purpose of this section, a work day shall be considered as any day except Saturday, Sunday or a legal holiday in the District of Columbia. (A legal holiday of less than one day shall be considered a work-day within the meaning of this section). Petitions submitted under this section shall (except as provided in the case of a protested change in rail rates filed under the provisions of 49 U.S.C. 10762(c)(3) be filed with the Secretary of the Commission by 4 p.m. United States Standard Time or local Daylight Saving Time whichever is in effect in Washington, D.C. Telegraphic notice or the equivalent thereof must be given by the petitioners to the respondent or respondents. As no replies to the petitions for reconsideration are contemplated under this rule, petitioners will be expected, except in unusual circumstances, to rely wholly on the information previously filed with the Suspension Board. Written or telegraphic communication in intelligible form requesting reconsideration will be sufficient. Such request should contain the following prefatory statement: "This matter requires expedited handling under § 1132.2". A petition not timely filed may be rejected by the Secretary.

(d) When the Suspension Board has declined to suspend a proposed tariff or schedule applicable on household goods as defined in § 1056.1(a) published for the account of a household goods carrier as defined in § 1040.2(b) on not less than 45 days' notice, the Commission will, except in extraordinary circumstances, act on petitions for reconsideration no later than 2 work-days after the petition is filed.

[47 FR 49573, Nov. 1, 1982; 47 FR 54081, Dec. 1, 1982, as amended at 52 FR 30165, Aug. 13, 1987; 53 FR 19302, May 27, 1988]

PART 1133—RECOVERY OF DAMAGES

AUTHORITY: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1133.1 Freight bill filing requirement under modified procedure.

If, under modified procedure (for general rules governing modified procedure, see part 1112), an award of damages is sought, complainant should submit the paid freight bills or properly certified copies with its statement when there are not more than 10 shipments; if more than 10 shipments are involved, complainant should retain the documents.

[47 FR 49575, Nov. 1, 1982]

§ 1133.2 Statement of claimed damages based on Commission findings.

(a) When the Commission finds that damages are due, but that the amount connot be ascertained upon the record before it, the complainant should immediately prepare a statement showing details of the shipments on which damages are claimed, in accordance with the following form:

Claim of —— under decision of the Interstate Commerce Commission in Docket No. ——.

—— Date of shipment.

—— Date of delivery or tender of delivery.

—— Date charges were paid.

—— Car (or vessel) initials.

—— Car (or voyage) number.

—— Origin.

—— Destination.

—— Route.

—— Commodity.

—— Weight.

—— Rate.

—— Amount.

—— Rate.

—— Amount.

—— Reparation on basis of Commission's decision.

—— Charges paid by.[1]

Claimant hereby certifies that this statement includes claims only on shipments covered by the findings in the docket above described and contains no claim for reparation previously filed with the Commission by or on behalf of claimant or, so far as claimant knows, by or on behalf of any person, in any other proceedings, except as follows: (Here indicate any exceptions,and explanation thereof).

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[1] Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in what other capacity.

____
(Claimant)

By ____________________
(Practitioner)

____
(Address)

____
(Date)

Total amount of reparation $——. The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date —— Concurred[2] in: —— Company —— Company, Defendant Collecting Carrier, Defendant[3]. ——

By ——, Auditor. By ——, Auditor.

(b) The statement should not include any shipment not covered by the Commission's findings, or any shipment on which complaint was not filed with the Commission within the statutory period. The filing of a statement will not stop the running of the statute of limitations as to shipments not covered by complaint or supplemental complaint. If the shipments moved over more than one route, a separate statement should be prepared for each route, and separately numbered, except that shipments as to which the collecting carrier is in each instance the same may be listed in a single statement if grouped according to routes. The statement, together with the paid freight bills on the shipments, or true copies thereof, should then be forwarded to the carrier which collected the charges, for verification and certification as to its accuracy. If the statement is not forwarded immediately to the collecting carrier for certification, a letter request from defendants that forwarding be expedited will be considered to the end that steps be taken to have the statement forwarded immediately. All discrepancies, duplications, or other errors in the statements should be adjusted by the parties and corrected agreed statements submitted to the Commission. The certificate must be signed in ink by a general accounting officer of the carrier and should cover all of the information shown in the statement. If the carrier which collected the charges is not a defendant in the case, its certificate must be concurred in by like signature on behalf of a carrier defendant. Statements so prepared and certified shall be filed with the Commission whereupon it will consider entry of a decision awarding damages.

[47 FR 49575, Nov. 1, 1982]

PART 1134—PROCEDURES FOR THE ELIMINATION OF DISCRIMINATION AGAINST RECYCLABLES

Sec.

1134.1 Filing of complaint.
1134.2 Discrimination defined.
1134.3 Recyclable materials defined.
1134.4 Filing of answer.
1134.5 Procedural handling.
1134.6 Intervention.
1134.7 Other procedures.

Authority: 49 U.S.C. 10321 and 10710; 5 U.S.C. 559.

Source: 42 FR 23806, May 11, 1977, unless otherwise noted. Redesignated at 47 FR 49576, Nov. 1, 1982.

§ 1134.1 Filing of complaint.

A person seeking elimination of discrimination against shipments of recyclable materials shall file a formal complaint. Such complaint should be so drawn as to fully advise the parties defendant and the Commission of the discrimination against recyclables complainted of; make specific reference to the tariffs or schedules containing the rates, fares, or charges occasioning the discrimination against the shipment of recyclable materials, if the claimed discrimination is said to be occasioned by the rate structure; and in all other respects comport with the requirements for the commencement of proceedings as set forth in the Rules of Practice.

§ 1134.2 Discrimination defined.

For the purpose of these rules, "discrimination" is understood to encompass, but not be limited to, situations in which carriers charge different rates and/or charges for substantially similar transportation service on recyclable materials which are competitive, in whole or in part, with virgin natural resource materials. Any complainant of the view that the "discrimination" referred to in section 603 of the Regional Rail Reorganization Act of 1973, 45 U.S.C. 793 (1974), is other than "unjust discrimination" prescribed by 49 U.S.C. 10741 shall set forth the reasons therefor in said complaint.

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[2] For concurring certificate in case collecting carrier is not a defendant.

[3] If not a defendant, strike out the word "defendant."

[42 FR 23806, May 11, 1977. Redesignated and amended at 47 FR 49576, Nov. 1, 1982]

§ 1134.3 Recyclable materials defined.

For the purpose of these rules; the term "recyclable materials" includes, but is not limited to, commodities shown in Standard Transportation Commodity Code Tariff No. 1-B, Traffic Executive Association—Eastern Railroads, Agent, I.C.C. No. C-998, issued jointly with other agents, effective April 1, 1974, including the following:

STCC No.	Commodity
22	Textile waste garneted or processed.
22 973 15	Noils, ramie.
22 973 25	Noils (combings or comb).
22 973 66	Rovings, jute and istle (ixtle).
32 299 24	Cullet (broken glass).
33 119	Blast furnace or coke oven products, nec.
32 312	Copper matte, speiss, or flue dust.
33 322	Lead matte, speiss, or flue dust.
33 332	Zinc dross, residues, ashes.
33 342	Aluminum residues.
33 398	Miscellaneous nonferrous metal residue.
40 1	Ashes.
40 2	Waste or scrap.

§ 1134.4 Filing of answer.

Answers to claims of discrimination shall be so drawn as to fully advise the complainant, any other parties, and the Commission of the defense to the charge of discrimination against the shipment of recyclable materials that the respondent proposes to assert in its defense and otherwise conform to the requirements of the Rules of Practice.

§ 1134.5 Procedural handling.

The proceeding following the commencement of the action as set forth in the foregoing rules shall be handled under modified procedure and will be accorded expeditious handling.

§ 1134.6 Intervention.

(a) A summary of any complaint filed with the Commission under these rules will be published in the FEDERAL REGISTER as notice to interested parties, (b) Government agencies, environmental and other public interest groups, and trade associations having an interest in the proceeding may intervene as of right by filing a statement of their intention to participate within 20 days from the date that notice of the filing of a complaint is published in the FEDERAL REGISTER. After the expiration of that 20-day period, petitions for leave to intervene must be filed under § 1113.7.

[42 FR 23806, May 11, 1977. Redesignated and amended at 47 FR 49576, Nov. 1, 1982]

§ 1134.7 Other procedures.

In all other particulars, the proceeding shall be governed by the Rules of General Applicability of the Commission.

[47 FR 49576, Nov. 1, 1982]

PART 1135—RAILROAD COST RECOVERY PROCEDURES

AUTHORITY: 49 U.S.C. 10321, 10707a, and 10731; 5 U.S.C. 553.

§ 1135.1 Quarterly adjustment of rates.

(a) Rail carriers may adjust rates and charges quarterly in order to compensate for inflationary cost increases. The quarterly adjustment shall not exceed the percentage change in the all inclusive index of railroad costs as proposed by the Association of American Railroads and modified by the Commission. The Commission will make modifications of the revisions to the index as necessary.

(b) The allowable increase will be based on a projection of the index to the midpoint of the quarter to which the index will apply. The percentage change must be calculated from a comparison of the forecast index for the midpoint of the quarter during which the rates will be in effect with the forecast index for the midpoint of the previous quarter. Each quarterly index will be adjusted for forecast error in the index issued six months earlier. The adjustments will be made by adding or subtracting, as appropriate, the difference between the index using actual data for the second prior quarter and the index using forecasted data for that quarter. Additionally, AAR shall file an index adjusted for productivity changes. The adjustment will be made by applying the multiyear average annual growth in productivity spread evenly over four quarters, compounded each quarter. Productivity adjustments shall compound in the same manner as rate changes.

(c) The Association of American Railroads must file its calculations with the Commission on the fifth day of the last month of the prior quarter (or the closest business day if the fifth is a Saturday, Sunday or holiday). The calculations are to be for the midpoint of the next quarter.

(d) Tariffs containing adjustments under the provisions of this rule may be filed to become effective on not less than ten days notice when the Rail Cost Adjustment Factor adopted by the Commission does not differ from that proposed by the Association of American Railroads. When the Rail Cost Adjustment Factor adopted by the Commission differs from that proposed by the Association of American Railroads the notice period shall be not less than five days. Reductions to rates published in the initial RCCR tariff may be published on one day's notice during the period between the publication of the tariff and the first day of the calendar quarter for which that tariff applies.

(e) Increases in rates consistent with these standards will not be investigated or suspended by the Commission unless the filing results in a double recovery of inflation-based cost increases.

(f) All cost recovery tariffs filed with the commission shall state that they are being filed in conformity with the rules in 49 CFR 1135.1 and 1312.17(k), and shall be amended under the same timetable applicable to rate increases, to reflect declines in the cost index. Any declines in the index below the level in effect on December 31, 1985, will be addressed by postponing authorizatons for future cost recovery rate increases pursuant to a "banking" procedure described more fully in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*, served October 17, 1986.

(g) In accordance with the procedures outlined in § 1312.17(k), each carrier shall timely file (either directly or through a duly authorized tariff-publishing agent) with the regulatory authority of each State in which it operates, all tariffs filed with the Commission in accordance with these procedures. The carrier will file with the State at the same time that it files with the Commission.

(h) A Commission order pursuant to paragraph (a) of this section that provides a quarterly adjustment of rates that is a positive number may not be applied to any rates that, in any annual order setting the ratio of revenue to variable costs pursuant to 49 U.S.C. 10731(e), the Commission finds exceed the established ratio on a regional aggregate or an individual basis, unless the railroads demonstrate that those rates have fallen to or below the established ratio.

[46 FR 22590, Apr. 20, 1981; 46 FR 51255, Oct. 19, 1981, as amended at 46 FR 55270, Nov. 9, 1981. Redesignated and amended at 47 FR 49576, Nov. 1, 1982; 50 FR 88, Jan. 2, 1985; 50 FR 37534, Sept. 16, 1985; 50 FR 43396, Oct. 25, 1985; 51 FR 37035, Oct. 17, 1986; 54 FR 12920, Mar. 29, 1989; 54 FR 42511, Oct. 17, 1989]

PART 1136—RAIL PASSENGER CARRIER COMMUTATION OR SUBURBAN FARE INCREASES

AUTHORITY: 49 U.S.C. 10321, 10707, and 10708; 5 U.S.C. 559.

§ 1136.1 Filing and service requirements.

A rail passenger carrier proposing commutation or suburban fare increases shall concurrently file appropriate tariffs with the Commission and serve supporting verified statements on the Commission (at its headquarters office and at each Commission office in States affected by the proposal) and on the Governor and appropriate State or County regulatory agency in each affected State, certifying that the notice requirements of 49 CFR 1312.5 have been met.

[55 FR 11203, Mar. 27, 1990]

PART 1137—PROCEDURES RELATING TO RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

AUTHORITY: 49 U.S.C. 10321, 10705, and 10728; 5 U.S.C. 553, 559.

§ 1137.1 Divisions of revenue cases.

(a) *Notice of intent to file complaint.*

(1) An original and 10 copies shall be filed for Commission use. Complainant shall serve copies of the notice upon each party (each receiver or trustee if a bankrupt line) to the joint rate.

(2) The notice of intent shall state generally: The involved traffic and applicable joint rates, the territorial scope, the participating railroads, and the present and proposed divisions.

(3) The notice shall include a statement indicating when filing of the formal complaint is expected. The formal complaint may not be filed more than one year after the filing of the notice of intent, unless the Commission approves an extension of time. Lack of diligence in filing of the formal complaint may result in dismissal of the action.

(b) *Notice of intent to file cross complaint.* These notices shall be filed within 30 days from service of the original notice and are subject to the requirements in paragraph (a) of this section.

(c) *Formal complaint (and cross complaint).* The formal complaint (and cross complaint) shall be filed no sooner than 120 days after the filing of the notice of intent unless good cause is shown either for not filing a notice or for a shorter notice period. The request to waive the notice time requirement may be included in the formal complaint or in a separate petition. The formal complaint (or cross complaint) shall contain the case-in-chief. All supporting papers shall be made available to opposing parties for inspection and copying. Complaints (and cross complaints) are subject to the same copy requirements as in paragraph (a) of this section. Complainant (or cross complainant) shall serve copies on each party of record. If circumstances permit, the cross complaint will be consolidated for disposition.

(d) *Answer.* The answer to the formal complaint shall contain the entire case-in-rebuttal. Supporting papers shall be made available to opposing parties for inspection and copying. If the notice of intent procedure was used, the case-in-rebuttal shall be filed within 30 days from service of the complaint. If the notice procedure is waived, the case-in-rebuttal shall be filed within 5 months of the filing of the complaint. Answers shall be served on each party of record. An original and 10 copies shall be submitted to the Commission.

(e) *Further proceedings.* Following submission of defendant's evidence, complainant may, within 2 months, submit reply evidence which shall be served on each party of record. Unless otherwise ordered, no further filing shall be accepted. Divisions cases shall be handled under the modified procedure, unless oral hearing is shown to be necessary.

(f) *Discovery.* If the notice of intent procedure was used, discovery shall be available to all parties only prior to the filing of the complaint. If the notice procedure was not used, discovery shall be available to defendants only and must be exercised under the time restrictions contained in paragraph (d) of this section. Prehearing conferences may be requested to adjudicate discovery requests, or they may be resolved by written pleadings.

(g) *Evidentiary guidelines.* (1) Traffic and cost studies, either individual or joint, may be submitted. Studies shall be accepted for consideration as long as they do not delay the process or conflict with other applicable deadlines. Cost studies should be developed, absent a more specific method, in accordance with Rail Form A (or URCS, if implemented), adjusted to reflect the specific traffic and updated to a current level. Studies may include the types of evidence discussed in appendix D of *Expeditious Handling of Divisions of Revenue Cases*, 353 I.C.C. 349, 388 (1976).

(2) The following evidentiary standards apply:

(i) Costs associated with exempt or contract traffic shall not be included, except that allocation of certain common costs to regulated traffic may be acceptable if adequately explained.

(ii) Elements of profit, income tax, and passenger, commuter, and LCL deficits are not proper expense items for developing fully allocated cost [See *Rules to Govern Assembling and Presenting Cost Evidence*, 337 I.C.C. 298 (1970)], but will be treated under the issue of revenue need.

(iii) Passenger and commuter service costs shall be considered only in relation to the carrier's revenue need.

(iv) All subsidies shall be disclosed and explained.

(v) The same divisional basis shall apply on "border point" traffic.

(h) *Time periods for completion of proceedings.* In accordance with section 10705(f)(1)(A)(ii), a party, for good cause, may seek extension of any applicable filing deadline. If a requested extension will result in an evidentiary period in excess of 9 months and the proceeding does not involve Class III carriers, the request shall contain sufficient information to allow the required report to Congress and set forth the reasons why the extension is necessary. When the proceeding involves a railroad in reorganization or a contention that the divisions do not cover the variable costs of handling the traffic, requests for extension of filing deadlines shall be viewed with disfavor. The Act directs us to give these proceedings preference and to take final action at the earliest practicable time. 49 U.S.C. 10705(f)(1)(A)(i).

[48 FR 12105, Mar. 23, 1983, as amended at 53 FR 19302, May 27, 1988]

§ 1137.2 Expeditious procedures for publication of separate rates for distinct services.

(a) *Purpose.* These regulations are designed to facilitate the publication of and thus encourage the use of separate rates for distinct rail services. Increased utilization of such rates will also increase the attractiveness of investing in railroads and rail service related enterprises by creating a keener competition among rail carriers and other modes of transportation. Encouraging these goals, the Commission also seeks to promote experimentation and innovative ratemaking through the initiation of rail carriers and the requests of their customers. Special permission requests for publication on short notice will be granted whenever feasible, and any proceedings involving separate rates for distinct services will be expedited.

(b) *Definitions.* (1) Distinct rail services are those railroad transportation services, which are separate from line-haul transportation services necessary for the movement of freight, and for which a specific tariff item is published by the railroads either upon their own initiative or upon the request of any shipper or receiver of freight.

The following definitions refer to those factors included in § 1137.2(h) in the determination of reasonableness:

(2) The term "cash-outlays" as used in 49 U.S.C. 10728 shall consist of the following:

(i) The annualized operating expenses, rents and taxes (including labor, materials and supplies, fuel and utilities, but excluding depreciation, amortization, and Federal income taxes) which change directly with the carrier's production of a distinct rail service.

(ii) The annualized cash-outlays equivalent to the carrier's capital investment, including the cost of providing such capital, which change directly with the carrier's production of a distinct rail service. These cash-outlays may be determined based on either the cost of sunk and new investment combined or the cost of new investment only.

(3) Demand is the willingness of a shipper to purchase a distinct rail service (as that term is defined in § 1137.2(b)(1)) at a specified price under the prevailing circumstances.

(c) *Title page.* In addition to requirements of § 1312.12, a tariff title page must also state whether the tariff or supplement contains new or changed rates for distinct rail services as defined in § 1137.2(b) and bear the following notation:

> This tariff (or supplement or loose leaf amendment) contains separate rates for distinct rail services (see item(s)——) within the meaning of § 1137.2(b).

(d) *Letters of transmittal.* In connection with separate rates for distinct rail services filed with the Commission, the letter of transmittal (required in § 1312.4) must also bear the notation found in § 1137.2(c).

(e) *Justification statements.* Justification statements in support of the publication of a separate rate or charge for a distinct rail service may be filed concurrently with the filing of the tariff. Information of the type specified in § 1137.2(h), if included in the justification statement, would assist the Commission in its initial evaluation of the proposal.

(f) *Protest(s) and investigation.* Protests to a tariff (or supplement) making reference on the title page to § 1137.2(b) must be verified and filed in accordance with § 1132.1(g). In the event of investigation or suspension, these proceedings will be accorded priority, and modified procedure (49 CFR Part 1112), to the extent feasible, will be followed.

(g) *Reply to protest.* Replies to protests of rates proposals under this section must be verified and should be filed and served promptly in accordance with § 1132.1(f). Respondents are urged to submit the information specified in § 1137.2(h) unless previously furnished.

(h) *Initial statement.* In order to expedite the proceedings in the event of the suspension of tariff schedules setting forth separate rates for distinct rail services or in the event that investigation without suspension of such schedules is ordered, respondent railroad or railroads shall submit in writing, under verfication, support of the tariff in issue. Such data should consist of the following:

(1) *Cash-outlays.* The dollars of "cash-outlays" as that term is defined in § 1137.2(b)(2). A full explanation of the methods, procedures and data used to determine "cash-outlays" should be supplied.

(2) *Demand.* Evidence supporting existence of a "demand" for the proposed service as that term is defined in § 1137.2(b)(3).

(3) *Market dominance.* If the proposal involves a new or increased charge for a distinct service, evidence prepared in accordance with the guidelines established in Ex Parte No. 320 (Sub-No. 2), 365 ICC 118 should be supplied. However, if such data has been previously submitted in the same proceeding, a notation to that effect will suffice.

(4) *Revenues.* The annualized dollars of revenue to be obtained from the rate or charge associated with providing the distinct rail service.

(5) *Outputs.* The annualized number of service outputs associated with the rate or charge per service unit. For example, if the proposed rate is stated in cents per hundredweight, per car switched, or per stop, then the number of service outputs should be expressed as x number of hundredweight, cars switched, or stops made.

(6) *Ratios.* The revenue-to-cost ratio (percentage) for the distinct rail service, based on the revenues to be obtained, and the carrier's "cash-outlays."

(7) *Effect.* A statement as to how the proposed rate on the distinct rail service will encourage competition; promote increased reinvestment by the railroad; or encourage and facilitate increased non-railroad investment in the production of rail services.

(8) *Alternative data.* The submission of the above evidence, paragraphs (h)(1) through (7) of this section, represents data which the Commission believes would provide a basis for meaningful analysis of the lawfulness of such rates. However, in lieu thereof or in addition thereto, respondents may justify their proposal on the basis of other relevant evidence or cost levels. A full explanation of the methods and procedures used shall be provided.

(i) *Reporting requirements.* For the 6-month period beginning February 5, 1977, all common carriers by rail, subject to 49 U.S.C. 11145; shall submit information showing those distinct rail service rates published in accordance with 49 U.S.C. 10728, showing actual or estimated revenues derived therefrom during the 6-month period. In addition, these reports, which shall be filed with the Commission by July 30, 1977, shall state whether the rates accomplished their intended purpose, and if not whether they intend any change in the level of charge or other change.

[42 FR 9024, Feb. 14, 1977; 42 FR 36265, July 14, 1977, as amended at 42 FR 62139, Dec. 9, 1977. Redesignated and amended at 47 FR 49576, Nov. 1, 1982; 48 FR 44827, Sept. 30, 1983; 50 FR 37534, Sept. 16, 1985]

PART 1138—PROCEDURES FOR REQUESTING COSTS AND REVENUES FROM RAIL CARRIERS CANCELLING THE APPLICATION OF A JOINT RATE PURSUANT TO 49 U.S.C. SECTION 10705a(c)

AUTHORITY: 49 U.S.C. 10321, 10705a; 5 U.S.C. 553.

SOURCE: 52 FR 13841, Apr. 27, 1987, unless otherwise noted.

§ 1138.1 Scope.

The provisions of this part apply to:

(a) Rail carriers, subject to the jurisdiction of the Commission under subchapter 1 of chapter 105 of title 49, that cancel, under 49 U.S.C. 10705a(c) the application of a joint rate in which they participate; and

(b) Other rail carriers participating in the joint rate subject to the cancellation, shippers moving traffic over a route subject to the cancellation, affected ports, and State or local agencies representing these parties, that request the Commission to provide revenue and variable cost information about the joint rate pursuant to 49 U.S.C. 10705a(h).

§ 1138.2 Procedures.

(a) The cancelling rail carrier is required to provide a shipper, port, or carrier described in § 1138.1, or State or local agencies representing them, with its division of revenue for the joint rate subject to cancellation under 49 U.S.C. 10705a(c) within three working days of receipt of a request. The tariff page for a cancellation under 49 U.S.C. 10705a(c) shall contain the name and telephone number of a person to contact for this information.

(b) If the request is not timely honored, the tariff may be suspended and investigated by the Commission, and ultimately disapproved.

(c) The Commission will furnish within five working days of a request, made pursuant to 49 U.S.C. 10705a(h) determinations of the variable cost of service and revenue of a rail carrier cancelling the application of a joint rate. The request must be sent directly to: Section of Rail Costing, Bureau of Accounts, Interstate Commerce Commission, Washington, DC 20423. A request must be route-specific and must include for each route to be cancelled:

(1) The tariff minimum weight.

(2) The tariff rate applicable at the minimum weight, tariff reference, and applicable unit (e.g., per hundred weight).

(3) The relevant territorial division and the relevant intraterritorial sudivision (where applicable) as percentages. (Carriers must supply this information to requesting parties within three working days of the request as set forth in paragraph (a) of this section.

(4) The car or types in which the traffic normally moves.

(5) The commodity description—STCC code.

(6) The class of traffic.

(7) The number of intertrain and intratrain switches (if known).

(8) The origin, destination, interchanges, carriers used, and the short line distance on the cancelling carrier's line (from the published distance tables) from or to the interchange point(s) at which the traffic is tendered.

(d) Along with any request for variable cost and revenue information, shippers and ports, or State or local agencies representing them, must certify to the Commission that they have no feasible transportation alternatives to the cancelled routes.

(e) Unless a carrier specifically waives its confidentiality interest, division of revenue information shall be considered confidential. All pleadings containing divisions data must be filed pursuant to 49 CFR 1104.14, our rule concerning protective orders to maintain confidentiality. The confidential data shall be submitted in a separate package, clearly marked on the outside "confidential materials subject to a protective order." A request for a protective order shall be filed as a separate pleading.

PART 1139—PROCEDURES IN MOTOR CARRIER REVENUE PROCEEDINGS

Subpart A—Common Carriers of General Commodities

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Authority: 49 U.S.C. 10321 and 10708; 5 U.S.C. 553 and 559.

Subpart A—Common Carriers of General Commodities

Source: 47 FR 49577, Nov. 1, 1982, unless otherwise noted.

§ 1139.1 Application.

(a) Upon the filing by the tariff publishing agencies named hereinafter on behalf of their motor common carrier members, or by such other agencies as the Commission may by order otherwise designate, of agency tariff schedules which contain (1) proposed general increases in rates or charges on general freight where such proposal would result in an increase of $1 million or more in the annual operating revenues on the tariff affected by the proposal, or (2) a proposed general adjustment with the objective of restructuring the rates on a wide range of traffic, involving both increases and reductions in rates and charges, where such proposal would result in a net increase of $1 million or more in annual operating revenues, the motor common carriers of general freight on whose behalf such schedules are filed shall, concurrently with the filing of those tariff schedules, file and serve, as provided hereinafter, a verified statement presenting and comprising the entire evidential case which is relied upon to support the proposed general increase or rate restructuring. Carriers thus required to submit their evidence when they file their schedules are hereby notified that special permission to file those schedules shall be conditioned upon the publishing of an effective date at least 45 days later than the date of filing, to enable proper evaluation of the evidence presented. Data to be submitted in accordance with §§ 1139.2 through 1139.5 of this part represent the minimum data required to be filed and served, and in no way shall be considered as limiting the type of evidence that may be presented at the time of filing of the schedules. If a formal proceeding is instituted, the carriers are not precluded from updating the evidence submitted at the time of filing of the schedules to reflect the contemporary situation.

(b) The motor common carriers of general freight which are subject to the provisions of this section are those which are members of the following tariff publishing agencies:

Central and Southern Motor Freight Tariff Association, Inc.
Central States Motor Freight Bureau, Inc.
The Eastern Central Motor Carriers Association, Inc.
Middle Atlantic Conference
Middlewest Motor Freight Bureau
The New England Motor Rate Bureau, Inc.
Pacific Inland Tariff Bureau, Inc.
Rocky Mountain Motor Tariff Bureau, Inc.

Southern Motor Carriers Rate Conference

(c) Upon the filing of tariff schedules other than those described hereinabove, the carriers or their tariff publishing agencies shall be required to comply with such procedures as the Commission may direct in the event an investigation is instituted. In any proceeding involving a proposed rate restructuring which would produce additional net revenue of less than $1 million the carriers will be required to submit only the data sought in §§ 1139.2 and 1139.3. Nothing stated in this part shall relieve the carriers of their burden of proof imposed under the Interstate Commerce Act.

§ 1139.2 Traffic study.

(a) The respondents shall submit a traffic study for the most current 12-month calendar year available, which shall be referred to as the "base-calendar year—actual." This year shall be the calendar year that has ended at least 7 months prior to the published effective date of the tariff schedules. If the effective date is less than 7 months following the end of the preceding calendar year, than the second preceding calendar year shall be considered as the "base-calendar year—actual." The study shall include a probability sampling of the actual traffic handled during identical time periods for each study carrier.

(b) The study carriers shall consist of those carriers subject to the requirements for allocation of expenses between line-haul and pickup and delivery services, as provided in Part 1207 of this chapter, Instructions 27 and 9002, which participate in one of the motor carrier industry's Continuous Traffic Studies, and which derive either $1 million or more in annual operating revenues from this issue traffic or 1 percent or more of the total annual operating revenues of all carriers from the issue traffic. A list of such carriers and the appropriate revenue data shall be submitted to corroborate the selection of the study carriers. "Issue traffic" consists of those shipments on which the freight rates or charges would be affected by the rate proposal.

(c) Respondents shall take a sample of the traffic handled by the study carriers according to acceptable standards of probability sampling principles and practices, and shall explain and evaluate the probability sample from the standpoint of: Purpose, sample design (including explanation of estimation procedure and disclosure of sampling errors for derived characteristics), quality control aspects involved in processing and tabulating data and any statistical analysis performed on the sampled data.[4]

(d) For cost and revenue purposes, the "carried" tariff basis shall be used. "Carried" tariff means the issue traffic handled solely by the study carriers, either single-line or interline. Estimates of current revenues applicable to the issue traffic should reflect all rates and charges in effect no later than 45 days prior to the date of tariff filing.

§ 1139.3 Cost study.

(a) The respondents shall submit a cost study. Highway Form B may be used for this purpose. Service unit-costs shall be developed for each individual study carrier, adjusted by size of shipment and length of haul, and shall be applied to respective individual carrier's traffic service units as developed from its traffic study. Operating ratios shall be determined for the issue traffic handled by the study carriers on the "carried" basis by individual weight brackets included within the rate proposal, for: (1) The traffic study year, that is, the "base-calendar year—actual," as hereinbefore defined, (2) a "present proforma year" reflecting conditions prevailing on a date no later than 45 days prior to the date of the tariff filing, and (3) a "restated proforma year" based on conditions anticipated on the effective date of the proposed rates, with a separation indicating projected operating ratios on two bases, namely, "based on current revenues," and "based on proposed revenues". Operating ratios shall also be shown for all other traffic not affected by the rate proposal for the same weight brackets as shown for the issue traffic, but only for the period indicated in paragraph (a)(1) of this section.

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[4] Although not adopted by the Commission, attention is called to a staff report, "Guidelines for the Presentation of the Results of Sample Studies," February 1, 1971, available from the Superintendent of Documents.

(b) In addition to the operating ratios, the cost study shall also be used to develop and provide the revenue-to-cost comparisons required in Appendix I hereto for the same time periods indicated for the operating ratios plus a "restated proforma year" based on constructed revenue need.

(c) For both the operating ratios and the revenue-to-cost comparisons in Appendix I, the "each-to-each" costing method, ie., the application of each individual study carrier's unit-cost to its traffic service units, applies only to the "base calendar year—actual." The application of possible labor and non-labor cost increases for the purpose of updating the "base calendar year—actual" cost data may be accomplished by the use of either individual carrier data for each of the study carriers, or the composite carrier data for those study carriers whose revenue from the issue traffic amount to 50 percent or more of their total system revenues for the "base calendar year—actual." The sample values for expenses and revenues shall be expanded to full year values without adjustments to known annual report figures of any carrier.

(d) Where cost studies are developed through the use of computer processing techniques, there shall be submitted a manual application of the costing procedures used for one traffic and cost study carrier (study carrier) in order to demonstrate the procedures by which the computer program distributes the annual report statistics, and applies service unit-costs to each. shipment. An illustration of the application of service unit-costs to the applicable traffic service units generated by one single-line sample shipment and by one interline sample shipment shall also be submitted. These sample shipments shall be on the "Carried" basis.

§ 1139.4 Revenue need.

Traffic and cost study carrier, i.e., the study carriers, shall submit evidence of the sum of money, in addition to operating expenses, including that needed to attract debt and equity capital, which they require to insure financial stability and the capacity to render service. This evidence shall include data required by Appendix I, parts I and II, and Appendix II.

§ 1139.5 Affiliate data.

Each individual traffic and cost study carrier having transactions with affiliates, subject to the reporting requirements of schedules 9009-A and 9009-B in the annual report for class I motor carriers, shall submit appropriate data and analyses reflecting the effect on the parent carrier's profits of transactions with affiliates. Such data and analyses shall be adequately supported, and there shall be submitted such underlying data as will permit a reconciliation of these data to the data supplied in the appropriate schedules of each carrier's annual report.

[47 FR 49577, Nov. 1, 1982; 47 FR 54082, Dec. 1, 1982]

§ 1139.6 Official notice.

The Commission will take official notice of all of the proponent carriers' annual and quarterly reports on file with the Commission.

§ 1139.7 Service.

The detailed information called for herein shall be in writing and shall be verified by a person or persons having knowledge thereof. The original and 10 copies of each verified statement for the use of the Commission shall be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423. One copy of each statement shall be sent by first-class mail to each of the regional offices of the Commission in the area affected by the proposed increase, where it will be open to public inspection. A copy of each statement shall be mailed by first-class mail to each party of record in the last formal proceeding concerning a general rate increase in the affected area or territory. However, one copy of each statement shall be sent by express mail to any person undertaking to bear the cost. Written request for this expedited service must be made no less than 5 days before the statement is due to be filed with the Commission. Otherwise, the service requirements of 49 CFR 1104.12 should be observed. Information with respect to carrier affiliates may be served on the parties in summary form, if so desired. A copy of each statement shall be furnished to any interested person on request.

[47 FR 49577, Nov. 1, 1982, as amended at 53 FR 19302, May 27, 1988]

§ 1139.8 Availability of underlying data.

All underlying data used in preparation of the material outlined above shall be made available in the office of the party serving such verified matter during usual office hours for inspection by any party of record desiring to do so, and shall be made available to the Commission upon request therefor. The underlying data shall be made available also at the hearing, but only if and to the extent specifically requested in writing and required by any party for the purpose of cross-examination. Since appendix I data are to be submitted on a combined carrier basis, any underlying individual carrier data used to complete appendix I should be furnished to the Commission for its use as well as for the use of parties opposing the sought increases.

APPENDIX I—REVENUE NEED AND ALLOCATION TO TRAFFIC AT ISSUE

[Cost allocation—see part II, line 13, ☐ Method A, ☐ Method B; check one; provide both]

Line No.	Item	Source [1]	Base calendar year—actual [2]	Present proforma year [3]	Restated proforma year [4]		
					Based on current revenues	Based on proposed revenues	Based on constructed revenue need [5]
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Part I. Revenue Need						
1	Operating revenue	A.R. Sch. 2998, L. 3	$	$	$	$	$
2	Operating expenses	A.R. Sch. 2998, L. 10					
3	Lease of distinct operating unit (net)	A.R. Sch. 2998, Net of Ls. 12 and 13.					
4	Miscellaneous deductions less other income.	A.R. Sch. 2998 (L. 27 minus L. 20).					
5	Interest included in miscellaneous deductions.	A.R. Sch. 2998, L. 23					
6	Income taxes on ordinary income [6]	A.R. Sch. 2998, L. 29					
7	Extraordinary and prior period items	A.R. Sch. 2998, L. 34					
8	Net income or loss [7]	A.R. Sch. 2998, L. 35					
9	Sum of money above operating expenses.	Sum of Ls. 4, 6 and 8					
10	Percent owned and leased property to net tangible property (3 decimals).	A.R. Sch. 100, Col. (c) (L. 21 ÷ L. 23) ÷ L. 26.	%	%	%	%	%
11	Sum of money related to transportation.	(L. 9 × —% in L. 10) plus L. 3					
12	System revenue need items and projected revenue need.	L. 2 plus L. 11					
	Part II. Allocation to Traffic at Issue						
13	Constant costs and sum of money allocated to issue traffic.	See Method A ( ) and Method B ( ), check one; provide both.					
14	Variable expenses from traffic at issue (90% variable excluding return on investment).[8].	From traffic and cost study					
15	Operating revenues from traffic at issue [9].	From traffic study					
16	Constant costs and sum of money allocated to issue traffic plus variable expenses.	L. 13 plus L. 14	$	$	$	$	$

APPENDIX I—REVENUE NEED AND ALLOCATION TO TRAFFIC AT ISSUE—Continued

[Cost allocation—see part II, line 13, ☐ Method A, ☐ Method B; check one; provide both]

Line No.	Item	Source [1]	Base calendar year—actual [2]	Present proforma year [3]	Restated proforma year [4]		
					Based on current revenues	Based on proposed revenues	Based on constructed revenue need [5]
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
17	Revenue to cost comparison (1 decimal).	L. 15÷L. 16	%	%	%	%	%

See Methods A and B and footnotes on following pages.

METHOD A—CONSTANT COSTS AND SUM OF MONEY ALLOCATED TO ISSUE TRAFFIC BASED ON TON AND TON-MILE METHOD (SEE NOTE A)

Line No.	Item	Source for columns 3 and 4	Base calendar year—actual	Present proforma year	Restated proforma year		
					Based on current revenues	Based on proposed revenues	Based on constructed revenue need
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
(a)	System constant costs	L. (b)+L. (c)	$	$	$	$	$
(b)	Not related to distance	(See Note B)					
(c)	Related to distance	(See Note B)	$	$	$	$	$
(d)	Percent not related to distance (3 decimals).	L. (b)÷L. (a)	%	%	%	%	%
(e)	Percent related tc distance (3 decimals).	L. (c)÷L. (a)	%	%	%	%	%
(f)	System sum of money	Appendix I, part I, L. 11	$	$	$	$	$
(g)	Not related to distance	L. (f)×L. (d)					
(h)	Related to distance	L. (f)×L. (e)					
(i)	Total system constant costs plus sum of money.	L. (a)+L. (f)					
(j)	Not related to distance	L. (b)+L. (g)					
(k)	Related to distance	L. (c)+L. (h)	$	$	$	$	$
(l)	Tons carried on issue and nonissue traffic combined.	From traffic study (see Note C).					
(m)	Ton-miles	......do					
(n)	Issue traffic tons carried	......do					
(o)	Issue traffic ton-miles	......do					
(p)	Percent of issue traffic tons to system tons (3 decimals).	L. (n)÷L. (l)	%	%	%	%	%
(q)	Percent of issue traffic ton-miles to system ton-miles (3 decimals).	L. (o)÷L. (m)	%	%	%	%	%

Constant Costs and Sum of Money Allocated To Issue Traffic

(r)	Not related to distance	L. (p)×L. (j)	$	$	$	$	$
(s)	Related to distance	L. (q)×L. (k)					
(t)	Total (enter amount in Appendix I, part II, line 13).	L. (r)+L. (s)	$	$	$	$	$

NOTE A: This procedure allocates constant costs and the sum of money based on the ton and ton-mile method and should be submitted for the information of the Commission. How much of the constant and sum of money costs may or should be recovered by any specific segment of traffic rest on (1) considerations including value of service, demand, and ability to pay, and (2) considerations which involve matters relating to regulatory policy.

NOTE B: Separate the amount of constant costs, including unrelated, by using Statement No. 6-68, Highway Form B, Schedule A, Line III. Assign the dollars in columns (6), (7), (8), and (9) times 10 percent to line (b), and the dollars in columns (4) and (5) times 10 percent to line (c).

NOTE C: Show tons and ton-miles on issue and nonissue traffic based on an expansion of the sample to a full year.

METHOD B—CONSTANT COSTS AND SUN OF MONEY ALLOCATED TO ISSUE TRAFFIC BASED ON DOLLAR (EXPENSE) METHOD (SEE NOTE A)

Line No.	Item	Source for columns 3 and 4	Base calendar year—actual	Present proforma year	Restated proforma year		
					Based on current revenues	Based on proposed revenues	Based on constructed revenue need
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
(a)	System constant cost (excluding	Note B	$	$	$	$	$
(b)	System sum of money	Appendix I, part I, line II					
(c)	Total system constant costs plus sum of money.	Line (a) plus line (b)					
(d)	Variable expenses on issue traffic	From traffic and cost study; Note C-.					
(e)	Variable expenses on issue and non-issue traffic combined.	From traffic and cost study; Note D-.					
(f)	Percent relationship (3 decimals)	Line (d) ÷ line (e)	%	%	%	%	%
(g)	Constant costs and sum of money allocated to issue traffic (enter amount in Appendix I, part II, line 13).	Line (c) × line (f)	$	$	$	$	$

NOTE A: This procedure allocates constant costs and the sum of money based on the dollar (expense) method and should be submitted for the information of the Commission. How much of the constant and sum of money costs may or should be recovered by any specific segment of traffic rests on (1) considerations including value of service, demand, and ability to pay, and (2) consideration which invlove matters relating to regulatory policy.

NOTE B: Determine the amount of constant costs, including unrelated, by using Statement No. 6–68, Highway Form B, Schedule A, Line 111, column (3) multiplied by 10 percent; insert this amount on line (a).

NOTE C: Determine the amount of variable costs, including unrelated, by using Statement No. 6–68, Highway Form B, Schedule A, line 111, column (3) multiplied by 90 percent to obtain the variable portion.

NOTE D: Show variable expenses allocated to the issue traffic based on an expansion of a sample to a full year.

Footnotes to Appendix I:

Explanatory: The Purpose of Appendix I is twofold, namely: (1) to obtain, through part 1, *Revenue Need,* an indication of the past actual, present, and restated system revenue needs of the traffic and cost study carriers, which, along with the financial data required in appendix B, will facilitate an analysis of the financial stability of these carriers, and (2) to allocate a part of these system revenue needs to the traffic at issue as provided for in part II, line 13. It is that portion of constant and sum of money costs resulting from this allocation plus the related variable expenses (line 14) which produces the total costs assigned to the issue traffic (line 16) which is then compared to the issue traffic revenues in the revenue-to-cost comparison shown on line 17. This comparison provides some indication of how much the total issue traffic is contributing to the carriers' overall revenue needs; and serves as a reference point for the consideration of ratemaking factors, other than costs, which may influence the appropriateness of the issue traffic's contribution.

Appendix I data should be completed and submitted for all traffic and cost study carriers combined. However, data for the "base calendar year—actual," column (3), should be developed and completed for each traffic and cost study carrier and the results combined for all such carriers. The data in part I, columns (4) through (7), which reflect an updating of revenue need data for the "base calendar year—actual" to present and restated levels, should be developed on either an individual carrier basis, or on a composite carrier basis comprised of all traffic and cost study carriers. Data in part II, line 14 columns (4) through (7), which reflect an updating of the cost and traffic study data for the "base calendar year—actual" to present and restated levels, should be developed by the use of either individual carrier data for each of the study carriers, or the composite carrier data for those study carriers whose revenues from the issue traffic amount to 50 percent or more of their total system revenues for the "base calendar year—actual." However, for line 14, the method selected should be the same as that used to update the operating ratios to present and restated levels as required in .3 *Cost study*. As indicated above, appendix I data should be completed and submitted only for all traffic and cost study carriers combined. Since appendix I are to be submitted on a combined carrier basis, any underlying individual carrier data used to complete this appendix should be furnished to the Commission for its use as well as for the use of parties opposing the sought increases. Data in columns (4) through (7) must be appropriately explained and supported. Each of the dollar figures called for in these columns shall be accompanied by an explanation of the bases or methods of restatement, including explicit identification of all projected or assumed changes in revenues, in wage rates, in price levels of other expenses and property items, and in productivity, as compared with the preceeding (actual) year results. Note that the time periods referred to in appendix I, that is, "Base calendar year—actual," "Present proforma year" and "Restated proforma year" are the same time periods indicated in § 1139.3, *Cost study*.

[1] Sources in this column apply to column (3) "Base calendar year—actual." Data for columns (4) through (7) should rely on column (3) as a base in order to reflect data for the "Present proforma year" and the "Restated proforma year." Annual report sources apply to class I motor carriers for class II carriers use comparable sources.

[2] The data in column (3) should reflect the revenue need data (part 1), and the traffic and cost study data (part II), for the traffic study year. That is, the "Base calendar year—actual," which should coincide with the "Base calendar year—actual" referred to in the *Cost study* (§ 1139.3). Parts I and II should be completed for each individual study carrier—the purpose being to allocate a portion of each carrier's system revenue need to the traffic at issue as provided for in part II. The results for all study carriers should then be aggregated and submitted on a combined carrier basis.

[3] The data in column (4) should be based on present wage, price and productivity levels and reflect conditions prevailing on a date no later than the 45 days prior to the date of the tariff filing.

[4] The data in columns (5), (6), and (7) should be based on wage, price, and productivity levels anticipated on the effective date of the proposed rates.

[5] The purpose of this column is to obtain data on what system revenue needs of the study carriers *should* be at a giving time. Part I should consider the sum of money in addition to operating expenses (including that needed to attract debt and equity capital) which the carriers feel they require to insure financial stability and the capacity to render service.

[6] In columns (4) through (7), show income taxes based on estimated taxable income reduced by the taxes applicable to other income such as, for example, capital gains transactions.

[7] In columns (4) through (7), determine the net income based on data shown for lines 1 though 7. In column (7), the estimate of the net income needed should be supported by evidence that it is a just and reasonable amount.

[8] Show expenses and revenues allocated to the total issue traffic based on an expansion of the sample to a full year. The amount shown on line 14 for variable expenses should agree with that shown in Method B, line (d).

[47 FR 49579, Nov. 1, 1982; 47 FR 54081, Dec. 1, 1982]

APPENDIX II—FINANCIAL RATIOS (TRAFFIC AND COST STUDY CARRIER ————)

[Complete appendix II for each traffic and cost study carrier and for all such carriers combined]

Line No.	Item	Source [1]	Third preceding calendar year (actual)	Second preceding calendar year (actual)	First preceding calendar year (actual or estimated)
	(1)	(2)	(3)	(4)	(5)
1	Current assets [2]	A.R. Sch. 100, L. 18	$	$	$
2	Net carrier operating property (owned)[2]	A.R. Sch. 100, L. 21			
3	Net carrier operating property (owned plus leased to others) [2].	A.R. Sch. 100, L. 21+L. 23			
4	Net tangible property [2]	A.R. Sch. 100, L. 26			
5	Intangibles [2]	A.R. Sch. 100, L. 32			
6	Current liabilities [2]	A.R. Sch. 101, L. 13			
7	Long-term debt [2]	A.R. Sch. 101, L. 15+L. 25			
8	Shareholders' equity [2]	A.R. Sch. 101, L. 55			
9	Operating revenues	A.R. Sch. 2998, L. 3			
10	Depreciation plus or minus depreciation adjustment.	A.R. Sch. 2998, L. 6+ or−L. 7			
11	Operating expenses	A.R Sch. 2998, L. 10			
12	Net carrier operating income	A.R. Sch. 2998, L. 14			
13	Ordinary income before income taxes	A.R. Sch. 2998, L. 28			
14	Net income or loss	A.R. Sch. 2998, L. 35			
15	Net income or loss plus or minus depreciation [3].	L. 10 Plus L. 14	$	$	$
16	Percent owned and leased property to net tangible property (3 decimals).	L. 3÷L. 4	%	%	%
17	Investment in owned and leased property plus working capital [4].		$	$	$
18	Shareholders' equity less intangibles	L. 8−L. 5	$	$	$
19	Long-term debt plus shareholders' equity less intangibles.	L. 7+L. 18	$	$	$
20	Operating ratio (2 decimals)	L. 11÷L. 9	%	%	%
21	Current ratio (2 decimals)	L. 1÷L. 6			
22	Ratio net income or loss to operating revenue (2 decimals).	L. 14÷L. 9	%	%	%
23	Rate of return on owned and leased operating property plus working capital (2 decimals).	L. 12÷L. 17	%	%	%
24	Rate of return on shareholders' equity less intangibles (2 decimals).	L. 14÷L. 18	%	%	%
25	Capital structure ratio (2 decimals)	L. 7÷L. 19	%	%	%
26	Throwoff to debt ratio (2 decimals)	L. 15÷L. 7	%	%	%
27	Ratio long-term debt to shareholders' equity less intangibles (2 decimals).	L. 7÷L. 18	%	%	%

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[1] Annual report sources refer to 1970 Motor Carrier Annual Report Form A for Class I Motor Carriers of Property. For class II carriers use the comparable sources. For years prior to 1970 use the comparable annual report sources.

[2] Show average of beginning and end of year figures.

[3] If carrier shows a net income, the amount shown for depreciation should be added to it; if a net loss, then the net loss and the amount for depreciation should be netted and the appropriate figure shown.

[4] Multiply the percent on line 16 by the difference between line 1 and line 6. Add the resulting amount to line 3.

[47 FR 49580, Nov. 1, 1982; 47 FR 54081, Dec. 1, 1982]

Subpart B—Intercity Bus Industry

SOURCE: 42 FR 32541, June 27, 1977, unless otherwise noted. Redesignated at 47 FR 49571, Nov. 1, 1982.

§ 1139.20 Application.

(a) Upon the filing by the National Bus Traffic Association, Inc., (NBTA) on behalf of its carrier members, or by such other agencies as the Commission may by order otherwise designate, of agency tariff schedules which contain proposed general increases in fares or charges where such proposal would result in an increase of $1 million or more in the annual operating revenues on the traffic affected by the proposal, the motor common carriers of passengers on whose behalf such schedules are filed shall, concurrently with the filing of those schedules, file and serve, as provided hereinafter, a verified statement presenting and comprising the entire evidential case which is relied upon to support the proposed general increase. Carriers thus required to submit their evidence when they file their schedules are hereby notified that special permission to file those schedules shall be conditioned upon the publishing of an effective date at least 30 days later than the date of filing, to enable proper evaluation of the evidence presented. Data to be submitted in accordance with §§ 1139.21 through 1139.23 represent the minimum data required to be filed and served, and in no way shall be considered as limiting the type of evidence that may be presented at the time of filing of the schedules. If a formal proceeding is instituted, the carriers are not precluded from updating the evidence submitted at the time of filing of the schedules to reflect the current situation.

(b) When filing tariff schedules other than those described hereinabove, the carriers or their tariff publishing agencies shall be required to comply with such procedures as the Commission may direct in the event an investigation is instituted. Nothing stated in this part shall relieve the carriers of their burden of proof imposed under the Interstate Commerce Act.

[42 FR 40860, Aug. 12, 1977. Redesignated at 47 FR 49577, Nov. 1, 1982, and amended at 51 FR 6238, Feb. 21, 1986]

§ 1139.21 Study carriers.

(a) For the purposes of this proceeding the "study carriers" shall consist of those Class I motor common carriers of passengers which are members of NBTA and which, during the latest calendar year available preceding the filing date of the proposed increase in fares and/or charges, derived $500,000 or more in annual operating revenues from the issue traffic, or 1 percent or more of the total annual operating revenues received by all Class I carriers from the issue traffic. Issue traffic is defined as that traffic (services) directly affected by the proposed increases in fares and/or charges.

(b) To corroborate the selection of the above study carriers, and to provide a data base for a continuing evaluation of the validity and usefulness of those carriers as a study group, respondents shall submit, as a part of their verified statement (justification), a list of all Class I motor common carriers of passengers participating in the issue traffic (services). For the above specified calendar year, the dollar amounts of total system operating revenues for each such carrier shall be arrayed in descending order; and, there shall be shown the amount of annual operating revenues received by each carrier from the total traffic at issue. Also, to be shown is the percent that each such carrier's total issue traffic revenue is to its total system revenues, and the percent that each carrier's total issue traffic revenue is to the total issue traffic revenues for all Class I carriers indicated in the above list. This list of carriers and the carrier's applicable revenues shall be referred to as Schedule A, Class I Participating Carriers' Revenue Data.

[42 FR 40860, Aug. 12, 1977. Redesignated at 47 FR 49577, Nov. 1, 1982]

§ 1139.22 Revenue data for study carriers.

The study carriers, as identified above, shall submit the revenue data called for in Schedule B herein, the purpose of which is to determine the amount of increased revenues which might be expected under the proposed increase in fares and/or charges on the issue traffic, and to evaluate the revenue aspects of the non-issue traffic, including that traffic subject to Interstate Commerce Commission rate regulation but not here at issue, and that traffic which is intrastate in character and under the jurisdiction of state public commissions.

[42 FR 40860, Aug. 12, 1977, as amended at 42 FR 56333, Oct. 25, 1977. Redesignated at 47 FR 49577, Nov. 1, 1982]

§ 1139.23 Revenue need.

The "study carriers" shall submit evidence of the sum of money, in addition to operating expenses, including that needed to attract debt and equity capital, which they require to insure financial stability and the capability to render service. This evidence shall include data required by Schedules C through G.

§ 1139.24 Official notice.

The Commission will take official notice of all of the proponent carriers' annual and quarterly reports on file with the Commission.

§ 1139.25 Service.

The detailed information called for herein shall be in writing and shall be verified by a person or persons having knowledge thereof. The original and 16 copies of each verified statement for the use of the Commission shall be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423. One copy of each statement shall be sent first-class mail to each of the regional offices of the Commission in the area affected by the proposed increase, where it will be open to public inspection. A copy of each statement shall be mailed by first-class mail to each party of record in the last formal proceeding concerning a general increase in bus passenger fares in the affected area or territory. Otherwise, the service requirements of § 1130.1 shall be observed.

§ 1139.26 Availability of underlying data.

All underlying data used in preparation of the material outlined above shall be made available in the office of the party serving such verified matter during usual office hours for inspection by any party of record desiring to do so, and shall be made available to the Commission upon request therefor. The underlying data shall be made available also at the hearing, but only if, and to the extent, specifically requested in writing and required by any party for the purpose of cross-examination.

SCHEDULE A—CLASS I PARTICIPATING CARRIERS' REVENUE DATA

[Dollars in thousands]

Line No. and carrier annual report No. (a)	Carrier (b)	Study code (c)	Total system operating revenue (d)	Total issue traffic revenue (e)	Percent of carrier's issue traffic revenue to—	
					Total system revenues, col. (e) ÷ col. (d) (2 Dec.) (f)	Total issue traffic revenues (percent dist. of col. (e) (2 Dec.) (g)
1						
2						
3						
4						
5						
6						
7						
8						
10						
11						
12						
13						
14						
15						

SCHEDULE A—CLASS I PARTICIPATING CARRIERS' REVENUE DATA—Continued

[Dollars in thousands]

Line No. and carrier annual report No. (a)	Carrier (b)	Study code (c)	Total system operating revenue (d)	Total issue traffic revenue (e)	Percent of carrier's issue traffic revenue to—	
					Total system revenues, col. (e) ÷ col. (d) (2 Dec.) (f)	Total issue traffic revenues (percent dist. of col. (e) (2 Dec.) (g)
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						

EXPLANATORY—SCHEDULE A

Purpose. The purpose of Schedule A is to corroborate the selection of the "study carriers", as defined in § 1139.21 of the prescribed procedures, and to provide a data base for the continuing evaluation of the validity and usefulness of the "study carrier" group.

Calendar Year. For the purpose of this schedule use the latest calendar year available preceding the filing date of the proposed increased fares and/or charges.

Column (a). The annual report number is that number assigned to the carrier by the Bureau of Accounts, Interstate Commerce Commission, for identification purposes.

Column (b). List Class I carrier members of national Bus Traffic Association and other interested Class I carriers participating in the tariffs of NBTA which will be affected by the proposal, in descending order of total system operating revenues.

Column (c). Use the following code for this column. For study carriers (as defined in § 1139.21) insert "S". For non-study carriers insert "NS".

Column (d). Use amount shown in carrier's Annual Report, Schedule 2998, Line 9.

Column (e). Issue traffic is defined as that traffic (services) directly affected by the proposed increase in fares and/or charges.

Columns (f) and (g). These columns are self-explanatory and are obtained by calculations using columns (d) and (e).

SCHEDULE B—STUDY CARRIERS' REVENUE DATA

[Dollars in thousands]

Line No. and study carrier (a)	Total operating revenue (b)	Issue traffic (services) revenue		Total issue traffic revenue (d)	Total nonissue traffic revenue (e)	Miscellaneous station and other operating revenues (f)
		(C-1)	(C-2)			
Base year actual: 4-quarter period ending ————						
1						
2						
3						
4						
5						
6						
7						
8						
10						
11						
12						
13						

SCHEDULE B—STUDY CARRIERS' REVENUE DATA—Continued

[Dollars in thousands]

Line No. and study carrier (a)	Total operating revenue (b)	Issue traffic (services) revenue		Total issue traffic revenue (d)	Total nonissue traffic revenue (e)	Miscellaneous station and other operating revenues (f)
		(C-1)	(C-2)			
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						
Total, all study carriers						
Pro forma year based on proposed revenues						
1						
2						
3						
4						
5						
6						
7						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						
Total, all study carriers						
Pro forma year based on current revenues						
1						
2						
3						
4						
5						
6						
7						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						

SCHEDULE B—STUDY CARRIERS' REVENUE DATA—Continued

[Dollars in thousands]

Line No. and study carrier (a)	Total operating revenue (b)	Issue traffic (services) revenue		Total issue traffic revenue (d)	Total nonissue traffic revenue (e)	Miscellaneous station and other operating revenues (f)
		(C-1)	(C-2)			
22						
23						
24						
25						
Total, all study carriers						

EXPLANATORY—SCHEDULE B

Purpose. The purpose of this schedule is to obtain—for each study carrier and by totals for all study carriers—(1) total operating revenue, (2) revenues attributable to the various types of traffic at issue, (3) revenue attributable to the total non-issue traffic, and (4) miscellaneous station and other operating revenues. These data shall be provided for the specified study periods, namely: Base year actual, pro forma year based on current revenues, and pro forma year based on proposed revenues.

The pro forma year based on proposed revenues for the traffic at issue will be compared to the issue traffic revenues for the pro forma year based on current revenues and for the base year actual to determine the amount of the proposed revenue increase being sought over these two periods. In addition, the revenue data for the total issue traffic (column (d)), will be used in Schedule C, Part III as a basis for allocating increased costs, i.e., the increased operating expenses and the increased "sum of money" costs.

Base Year Actual. Data to be reported in this and other schedules herein for the base year actual shall be based on the 4-quarter calendar year periods identified below:

FILING MONTH OF VERIFIED STATEMENT

January	Sept. 30, preceding year.
February	Do.
March	Do.
April	Dec. 31, preceding year.
May	Do.
June	Do.
July	Mar. 31, filing-month year.
August	Do.
September	Do.
October	June 30, filing-month year.
November	Do.
December	June 30, filing-month year.

The 4-quarter calendar year periods identified above represent the minimum requirement. However, in event a proposed fare/charge increase is filed at a time when data for a more current quarter than that specified are obtainable then that more current quarter may be used in the base year actual. For example, if an increase is filed in late March and data for the 4th quarter of the preceding year are obtainable, then the base year actual ending December 31 may be used in lieu of the base year actual ending September 30.

Pro forma year data. Revenue data for the pro forma year shall be reported in two ways, namely: Based on current revenues and based on proposed revenues. Separate schedules are required for each pro forma year. These data do not represent a forecast but reflect the results of 12 months of operation at particular rate levels. Thus, data for the pro forma year based on current revenues should be based on a restatement of the revenue data for the base year actual to reflect fares and/or charges which are currently in effect. Similarly data for the pro forma year based on proposed revenues should reflect a restatement of the base year actual data but at levels reflecting the proposed fares and/or charges.

Column (a). Insert in this column the company name of each "study carrier" as defined in § 1139.21 of the prescribed procedures.

Column (b). Use carrier's Annual Report, Schedule 2998, Line 9. The dollar amount in this column, for each study carrier, should equal the toal of columns (d), (e), and (f).

Columns (c-1), (c-2), etc. As defined in § 1139.21, "issue traffic" means that traffic (service) affected by the proposed increase in fares and/or charges, and is limited to the fares and/or charges published in schedules and tariffs filed with the Interstate Commerce Commission. For the purpose of the proposed increases filed under the prescribed procedures of this proceeding, column (c) should be subdivided into columns (c-1), (c-2), etc. to show separately the revenue for each type of traffic in issue and each column should be appropriately headed. For instance, a proposal to increase passenger fares and express rates would call for Intercity Passenger Revenue in column (c-1), and Express Revenue in column (c-2). If a third basic service is included in the proposed increase, column (c-3) should show revenue from that traffic with an appropriate identification in this column heading.

Column (d). The total issue traffic revenues in this column should equal the sum of columns (c-1), (c-2), etc.

Column (e). The revenues to be reported in this column shall consist of those revenues other than "total issue traffic revenue" (Column (d)), and "miscellaneous station and other operating revenues" (Column (f)). Thus, "non-issue traffic revenue" means those revenues accruing from providing the types of services indicated in columns (c-1), etc., but which may be "intrastate" in nature, are "exempt" as provided under 49 U.S.C. 10721, 10722, 10723 and 10724, or which are otherwise not at issue in a proposed fare and/or charge increase. Such non-issue traffic may also include a commuter or mass transportation service, which is the transportation of passengers generally performed within a city or town and the suburban areas contiguous thereto. However, in some instances this service may also be intercity in character where the cities involved are within relatively short distances of each other and the primary purpose is the mass transportation of commuter passengers to and from these cities.

Column (f). For the purpose of this schedule the revenues to be reported in this column shall consist of those in Account 3600, Miscellaneous Station Revenue, and in Account 3900, Other Operating Revenue. (See 49 CFR Part 1206.)

Presentation of statement on revenue sample studies. Historically, in order to separate interstate from intrastate revenues, it has not been necessary for annual report purposes for each carrier to conduct studies of its traffic operations, whether based upon sampling or otherwise, however, many of the Class I carriers make such studies for managerial purposes. In order to permit the evaluation of such studies, and the evidence derived therefrom, each study carrier, as defined in section 1139.21, shall submit an affidavit explaining how its study was conducted and how it appraises the reliability of the results. Carriers having studies based upon sampling should conform with the staff report entitled "Guidelines for the Presentation of the Results of Sample Studies," February 1, 1971.

[42 FR 32541, June 27, 1977. Redesignated and amended at 47 FR 49577, Nov. 1, 1982]

Attachment 1

SCHEDULE C

PART I—CONDENSED INCOME STATEMENT

[Dollars in thousands]

( ) Greyhound Lines, Inc. ( )Trailways combined ( ) All study carriers

Line No. and Item (a)	Source A.R. schedule 250(b)	Base year-actual (c)	Pro forma year				
			Current revenue and projected expense (d)	Proposed revenue and projected expense (e)	Proposed revenue and future expense (f)	Constructed revenue need projected expense (g)	Constructed revenue need future expense (h)
1. Passenger revenue	L. 1						
2. Special bus revenue	L. 2						
3. Baggage revenue	L. 3						
4. Mail revenue	L. 4						
5. Express revenue	L. 5						
6. Newspaper revenue	L. 6						
7. Miscellaneous station revenue	L. 7						
8. Other operating revenue	L. 8						
9. Total revenues	L. 12						
10. Total expenses	L. 18						
11. Net operating revenue	L. 19						
12. Rent for lease of carrier property-debt	L. 20						
13. Income from lease of carrier property-credit	L. 21						
14. Net carrier operating income	L. 22						
15. Total other income	L. 33						
16. Gross income	L. 34						
17. Interest and amortization of debt discount expenses and premium.	Sums of lines 35, 38, and 39.						
18. Total income deductions	L. 42						
19. Income (loss) from continuing operations before income taxes.	L. 43						
20. Income taxes on income from continuing operations.	L. 44						
21. Provision for deferred taxes	L. 45						
22. Income (loss) from continuing operations	L. 46						
23. Total income (loss) from discontinued operations	L. 49						
24. Total extraordinary items and accounting changes (debit) credit.	L. 56						
25. Net income (loss) transferred to retained income-unappropriated.	L. 57						

PART II—SYSTEM OPERATING EXPENSES AND SUM OF MONEY ASSIGNED TO TRANSPORTATION SERVICE

[Dollars in thousands]

Line No. and Item (a)	Source (b)	Base year-actual (c)	Pro-forma year				
			Current revenue and projected expense (d)	Proposed revenue and projected expense (e)	Proposed revenue and future expense (f)	Constructed revenue need projected expense (g)	Constructed revenue need future expense (h)
1. Operating expenses "Sum of money" items	Pt. I, L. 10						
2. Rent for, and from, lease of carrier property (net)	Pt. I, net of ls. 12 and 13						
3. Interest and amortization of debt discount and expense and premium on debt.	Pt. I, L. 17						
4. Percent of carrier operating property to total tangible property.	A. R. Sch. 200 col. (b) (ls. 19 and 21)÷(L. 26) (2 dec.).						
5. Interest and related expenses assigned to transportation service.	L. 3xl, 4, above						
6. Taxable income assigned to transportation service	(Pt. I, L. 14) minus (pt. II, L. 5)						
7. Taxable income from continuing operations	Pt. I, L. 19						
8. Percent of taxable income assigned to transportation service to taxable income from continuing operations.	L. 6÷L. 7, above (2 dec.)						
9. Total income taxes	Pt. I, L. 20						
10. Income taxes assigned to transportation service	L. 8xL. 9, above						
11. Income (loss) assigned to transportation service	L. 6 minus L. 10 above						
12. Total "sum of money" items assigned to transportation service.	Ls. 2, 5, 10 and 11						
13. Operating expenses and "sum of money" assigned to transportation service.	Ls. 1 and 12, above						
14. Ratio of income (loss) assigned to transportation to income (loss) from continuing operations (1 det.).	Pt. II, L. 11÷Pt. I, L. 22						

PART III—ALLOCATION OF INCREASED SYSTEM OPERATING EXPENSES AND SUM OF MONEY TO TRAFFIC AT ISSUE

[Dollars in thousands]

Line No. and Item (a)	Source (b)	Base year-actual (c)	Pro-forma year				
			Current revenue and projected expense (d)	Proposed revenue and projected expense (e)	Proposed revenue and future expense (f)	Constructed revenue need projected expense (g)	Constructed revenue need future expense (h)
A.—Revenue distribution							
1. Revenues applicable to traffic at issue	From revenue study						

2. System operating revenues, less miscellaneous station revenues (3600) and other operating revenues (2900).	Sch. C, pt. I, L. 9÷Ls. 7 and 8.						
3. Percent of total issue traffic revenues to L. 2 revenues.	L. 1÷L. 2 (percent to 2 dec.)						
B.—Allocation to traffic at issue							
4. Increased system operating expenses	Pt. II, line 1						
5. Increased system "sum of money"	Pt. II, line 12						
6. Total increased system operating expenses and "sum of money".	L. 4÷L. 5, above						
7. Allocation of line 6 to traffic at issue	L. 3 x L. 6 above						
8. Increased revenues on traffic at issue	L. 1, above						
9. Ratio of increased revenues to increased costs on traffic at issue.	L. 8÷L. 7, above (2 dec.)						

EXPLANATORY—SCHEDULE C (PARTS I, II, AND III)

Columns (d) through (h). These columns shall contain the pro forma year data.

The data reported in column (d) shall be the base year actual (column (c)) restated to reflect conditions (wage, price, and productivity, etc.) prevailing on or near the effective date of the proposed increase. Revenues in column (d) shall be based on fares and charges which are currently in effect.

The data reported in column (e) shall also be the base year actual (column (c)) restated to reflect conditions (wage, price, and productivity, etc.) prevailing on or near the effective date of the proposed increase. Unlike column (d), however, revenues in column (e) shall be based on the proposed fares and charges.

The data reported in column (f) shall also be the base year actual (column (c)) restated to reflect conditions (wage, price, and productivity, etc.) prevailing on or near the effective date of the proposed increase plus allowable foreseeable future costs. Revenues shall be based on the proposed fares and charges.

The data reported in columns (g) and (h) shall be based on what the system revenue needs of the study carriers should be at a given time, including the constructed projected and future operating expenses and the constructed "sum of money" above these expenses. The constructed "sum of money" should be supported by evidence that it is a just and reasonable amount and is that needed to attract debt and equity capital and to insure financial stability and the capacity to render service. Such evidence should include an analysis of the adequacy of the carriers' earnings, the carriers' cost of debt and equity capital, the various kinds of risk attending their operations and the financing thereof, and the carriers' ongoing needs for working capital, new equipment and facilities.

[47 FR 53281, Nov. 24, 1982]

SCHEDULE D

[Dollars in thousands]

( ) Greyhound Lines, Inc. ( ) Trailways combined ( ) All study carriers

Line No. and Item (a)	Source (b)	Calendar year 19— (c)	Calendar year 19— (d)	Base year actual (e)
PART I.—Selected financial data				
Income statement data:				
1 Total revenues	Sch. 2998, L. 9			
2 Total expenses	Sch. 2998, L. 15			
3 Depreciation expense and amortization of carrier operating property.	Sch. 2998, L. 11 + L. 12			
4 Lease of carrier property (net)	Sch. 2998, L. 17 + L. 18			
5 Net carrier operating income	Sch. 2998, L. 19			
6 Equity in earnings (losses) of associated companys.	Sch. 2998, L. 29			
7 Interest on long-term obligations	Sch. 2998, L. 32			
8 Amortization of debt discount and expense and premium on debt (net).	Sch. 2998, L. 35 + L. 36			
9 Pretax income (loss)	Sch. 2998, L. 40			
10 Tax on income from continuing operations	Sch. 2998, L. 41			
11 Provision for deferred taxes	Sch. 2998, L. 42			
12 Income (loss) from continuing operations	Sch. 2998, L. 43			
13 Total income (loss) from discontinued operations.	Sch. 2998, L. 46			
14 Total extraordinary items and accounting changes—(debit) credit.	Sch. 2998, L. 53			
15 Net income (loss)	Sch. 2998, L. 54			
Balance sheet data:				
16 Current assets	Sch. 100, L. 17, col. (b)			
17 Current liabilities	Sch. 101, L. 14, col. (b)			
18 Current assets [1]	Sch. 100, L. 17			
19 Current liabilities [1]	Sch. 101, L. 14			
20 Long-term debt due within 1 yr	Sch. 101, L. 15, col. (b)			
21 Long-term debt due after 1 yr	Sch. 101, L. 24, col. (b)			
22 Long-term debt due within 1 yr [1]	Sch. 101, L. 15			
23 Long-term debt due after 1 yr [1]	Sch. 101, L. 24			
24 Owners' equity	Sch. 101, L. 38 + L. 41 + L. 44 — L. 45, col. (b).			

SCHEDULE D—Continued

[Dollars in thousands]

( ) Greyhound Lines, Inc. ( ) Trailways combined ( ) All study carriers

Line No. and Item (a)	Source (b)	Calendar year 19— (c)	Calendar year 19— (d)	Base year actual (e)
25 Owners' equity [1]	Sch. 101, L. 38 + L. 41 + L. 44 — L. 45.			
26 Total intangible property [1]	Sch. 100, L. 31			
27 Net carrier operating property (owned plus leased to others) [1].	Sch. 100, L. 19 + L. 21			
28 Investment in owned and leased property plus working capital.	L. 27 + L. 18 — L. 19			
Miscellaneous and financial ratios:				
29 Cash dividend appropriations	Sch. 2930, L. 16			
30 Operating ratio (percent)	L. 2 ÷ L. 1			
31 Current ratio	L. 16 ÷ L. 17			
32 Dividend payout ratio (percent)	L. 29 ÷ L. 15			
33 Throwoff to debt ratio (percent)	(L. 3 + L. 15) ÷ (L. 20 + L. 21).			
34 Capital structure ratio (percent)	(L. 20 + L. 21) ÷ (L. 20 + L. 21 + L. 24).			
35 Working capital	L. 18 — L. 19			
36 Rate of return on owned and leased operating property plus working capital (percent).	L. 5 ÷ L. 28			
37 Rate of return on owners' equity, less intangibles (percent).	L. 15 ÷ (L. 25 — L. 26)			
38 Rate of return on total capitalization (percent).	(L. 7 + L. 8 + L. 15) ÷ (L. 22 + L. 23 + L. 25).			
PART II. Accounts giving effect to interperiod tax allocation (deferred taxes) and impact of investment tax credit				
Balance sheets accounts:				
1 Deferred income tax charges	Sch. 100, L. 16, col. (b)			
2 Accumulated deferred income tax charges	Sch. 100, L. 44, col. (b)			
3 Deferred income tax credits	Sch. 101, L. 13, col. (b)			
4 Accumulated deferred income tax credits	Sch. 101, L. 27, col. (b)			
Income statement accounts:				
5 Provision for deferred taxes	Sch. 2998, L. 42			
6 Provision for deferred taxes—Extraordinary items.	Sch. 2998, L. 50			
7 Impact of investment tax credit on continuing operations.	See explanatory			

[1] Show average of beginning and end-of-year figures.

EXPLANATORY—SCHEDULE D (PART I)

Purpose. The purpose of Schedule D (Part I) is to ascertain the financial posture of Greyhound Lines, Inc. and all the study carrier carriers by an analysis of certain key financial data, with a view to determining revenue needs.

Study Carrier Groupings. Schedule D (Part I) shall be prepared on the following two bases:

1. Greyhound Lines, Inc.
2. Trailways Combined (study carriers, only)
3. All Study Carriers

Column (b). The annual report sources in this column refer to the 1976 Annual Report Form MP-1. For years prior or subsequent to 1976, use comparable sources.

Column (c). If the fare/charge increase is filed during the first six months of the calendar year, the data reported in column (c) shall be based on the 3rd calendar year preceding the filing year. For example, if the rate increase is filed on May 15, 1977, column (c) shall report data for calendar year 1974.

If the fare/charge increase is filed during the last six months of the calendar year, the data reported in column (c) shall be based on the 2nd calendar year preceding the filing year. For example, if the rate increase is filed on Nov. 15, 1977, column (c) should report data for calendar year 1975.

Column (d). If the fare/charge increase is filed during the first six months of the calendar year, the data reported in column (d) should be based on the 2nd calendar year preceding the filing year. For example, if the rate increase is filed on May 15, 1977, column (d) should report data for calendar year 1975.

If the rate increase is filed during the last six months of the calendar year, the data reported in column (d) shall be based on the 1st calendar year preceding the filing year. If, for example, the fare/charge increase is filed on November 15, 1977, column (d) should report data for calendar year 1976.

Column (e). Data to be reported in this column for the base year actual shall be based on the 4-quarter calendar year periods identified below:

Filing month of verified statement	Four-quarter calendar year period ending
January	Sept. 30, preceding year.
February	Do.
March	Do.
April	Dec. 31, preceding year.
May	Do.
June	Do.
July	Mar. 31, filing-month year.
August	Do.
September	Do.
October	June 30, filing-month year.
November	Do.
December	Do.

The 4-quarter calendar year periods identified above represent the minimum requirement. However, in event a proposed fare/charge increase is filed at a time when data for a more current quarter than that specified are obtainable, the more current quarter may be used in the base year-actual. For example, if an increase is filed in late March and data for the 4th quarter of the preceding year is obtainable, the base year-actual ending December 31, may be used in lieu of the base year-actual ending September 30.

EXPLANATORY—SCHEDULE D (PART II)

Purpose. Schedule D (Part II) is designed to segregate the impacts of: (1) The Commission's deferred tax accounting rule change; and (2) the impact of the investment tax credit on continuing operations.

Study Carrier Groupings. The study carrier groups for Part II shall be the same as those designated for Part I.

Column (b.) The annual report sources in this column refer to the 1976 Annual Report Form MP-1. For years prior or subsequent to 1976, use comparable sources.

Columns (c), (d) and (e). The reporting periods for Part II shall correspond to those in Part I.

Investment Tax Credit Impact. This impact is: (1) The amount by which Account 8000, Income Taxes on Income from Continuing Operations, was credited for the investment tax credit if the flow-through accounting method was elected or (2) the amount by which Account 8040, Provision for Deferred Taxes, was credited for the amortization of the investment tax credit if the deferral accounting method was elected.

[42 FR 32541, June 27, 1977; 42 FR 40861, Aug. 12, 1977. Redesignated at 47 FR 49577, Nov. 1, 1982]

SCHEDULE E—STATEMENT OF CHANGES IN FINANCIAL POSITION

[Dollars in thousands]

( ) Greyhound Lines, Inc. ( ) Trailways combined ( ) All study carriers

Line No. and item (a)	Source (b)	Calendar year 19— (c)	Calendar year 19— (d)	Base year-actual (e)
SOURCES OF WORKING CAPITAL				
Working capital provided by operations:				
1 Net income (loss) before extraordinary items.	Sch. 2998, L. 47, col. (b)			
Add expenses not requiring outlay of working capital (subtract) credits not generating working capital:				
2 Loss (gain) on sale or disposal of tangible property.	Sch. 5091, L. 7, col. (b)			
3 Add depreciation and amortization expense	Sch. 2998, Ls. 11+12+35+36, col. (b).			
4 Net increase (decrease) in deferred income taxes.	Sch. 2998, L. 42, col. (b)			
5 Net decrease (increase) in parent's share of subsidiary's undistributed income for the year.	Sch. 2998, L. 28			
6 Net increase (decrease) in noncurrent portion of estimated liabilities.	Sch. 101, L. 31, cols. (b)-(c)			
7 Other (specify):				
8				
9				
10				

SCHEDULE E—STATEMENT OF CHANGES IN FINANCIAL POSITION—Continued

[Dollars in thousands]

( ) Greyhound Lines, Inc. ( ) Trailways combined ( ) All study carriers

Line No. and item (a)	Source (b)	Calendar year 19— (c)	Calendar year 19— (d)	Base year-actual (e)
11				
12				
13				
14				
15				
16				
17				
18 Total working capital from operations before extraordinary items.				
19 Extraordinary items and accounting changes.	Sch. 2998, L. 53, col. (b)			
Add expenses not requiring outlay of working capital (subtract) credits not generating working capital.				
20 Loss (gain) on extraordinary items	Sch. 2998, L. 48, col. (b)			
21 Net increase (decrease) in deferred income taxes.	Sch. 2998, L. 50, col (b)			
22 Cumulative effect of changes in accounting principles.	Sch. 2998, L. 52, col. (b)			
Other (specify):				
23				
24				
25				
26				
27				
28 Total working capital from extraordinary items and accounting changes.				
29 Total working capital from operations (lines 18 and 28).				
Working capital from sources other than operating:				
30 Proceeds from issuance of long-term liabilities.				
31 Proceeds from sale/disposition of carrier operating property.	Sch. 1200-A, L. 9			
32 Proceeds from sale/disposition of other tangible property.				
33 Proceeds from sale/repayment of investments advances.	Sch. 1600/1650, ls. 23+47			
34 Net decrease in sinking and other special funds.	Sch. 1700, ls. 15+31+50, cols. (d)–(j).			
35 Proceeds from issue of capital stock	Sch. 2700A/2710A, L. 12, cols. (e)+(f)—(i).			
Other (specify):				
36				
37				
38				
39				
40				
41 Total working capital from sources other than operating.				
42 Total sources of working capital (lines 29 and 41).				
APPLICATION OF WORKING CAPITAL				
43 Amount paid to acquire/retire long-term liabilities.				
44 Cash dividends	Sch. 2930, L. 16			
45 Purchase price of carrier operating property.	Sch. 1200, L. 11, col. (c)			
46 Purchase price of other tangible property				
47 Purchase price of long-term investments and advances.	Sch. 1600/1650, ls. 23+47, col. (e).			
48 Net increase in sinking or other special funds.	Sch. 1700, ls. 15+31+50, cols. (j)–(d).			
49 Purchase price of acquiring treasury stock	Sch. 2700B/2710B, L. 12, col. (c).			

SCHEDULE E—STATEMENT OF CHANGES IN FINANCIAL POSITION—Continued

[Dollars in thousands]

( ) Greyhound Lines, Inc. ( ) Trailways combined ( ) All study carriers

Line No. and item (a)	Source (b)	Calendar year 19— (c)	Calendar year 19— (d)	Base year-actual (e)
Other (specify):				
50				
51				
52				
53				
54				
55 Total application of working capital				
56 Net increase (decrease) in working capital (line 42 less line 55).				

EXPLANATORY—SCHEDULE E

Purpose. Schedule E is designed to provide the Commission with an indication of the carrier's sources and uses of funds over the recent past.

Study Carrier Groupings. Schedule E shall be prepared on the following two bases:

1. Greyhound Lines, Inc.
2. Trailways Combined (study carriers, only)
3. All Study Carriers

"Funds". The term "Funds" for the purpose of this schedule shall include all assets or financial resources even though a transaction may not directly affect cash or working capital. For example, the purchase of property in exchange for bonds or shares of stock would be an application of funds for investment in property provided by the issue of securities.

Sources and uses of funds should be individually disclosed. For example, outlays for fixed assets should not be reported net of retirements.

Column (b). The annual report sources in this column refer to the 1976 Annual Report Form MP-1. For years prior or subsequent to 1976, use comparable sources.

Column (c). If the fare/charge increase is filed during the first six months of the calendar year, the data reported in column (c) shall be based on the 3rd calendar year preceding the filing year. For example, if the rate increase is filed on May 15, 1977, column (c) shall report data for calendar year 1974.

If the fare/charge increase is filed during the last six months of the calendar year, the data reported in column (c) shall be based on the 2nd calendar year preceding the filing year. For example, if the rate increase is filed on Nov. 15, 1977, column (c) should report data for calendar year 1975.

Column (d). If the fare/charge increase is filed during the first six months of the calendar year, the data reported in column (d) should be based on the 2nd calendar year preceding the filing year. For example, if the rate increase is filed on May 15, 1977, column (d) should report data for calendar year 1975.

If the rate increase is filed during the last six months of the calendar year, the data reported in column (d) shall be based on the 1st calendar year preceding the filing year. If, for example, the fare/charge increase is filed on November 15, 1977, column (d) should report data for calendar year 1976.

Column (e). Data to be reported in this column for the base year-actual shall be based on the 4-quarter calendar year periods identified below:

Filing month of verified statement	Four-quarter calendar year period ending
January	Sept. 30, preceding year.
February	Do.
March	Do.
April	Dec. 31, proceding year.
May	Do.
June	Do.
July	Mar. 31, filing-month year.
August	Do.
September	Do.
October	June 30, filing-month year.
November	Do.
December	Do.

The 4-quarter calendar year periods identified above represent the minimum requirement. However, in event a proposed fare/charge increase is filed at a time when data for a more current quarter than that specified are obtainable, the more current quarter may be used in the base year-actual. For example, if an increase is filed in late March and data for the 4th quarter of the preceding year is obtainable, the base year-actual ending December 31, may be used in lieu of the base year-actual ending September 30.

[42 FR 32541, June 27, 1977; 42 FR 40861, Aug. 12, 1977. Redesignated at 47 FR 49577, Nov. 1, 1982]

SCHEDULE F—AFFILIATE REVENUE DATA FOR SERVICES RENDERED

[Dollar in thousands]

( ) Greyhound Lines, Inc. ( ) Trailways combined ( ) All Study carriers

Line No. and Item (a)	Calendar year 19— (b)	Calender year 19— (c)	Base year-actual (d)
affiliate revenues for services rendered to respondents			
1 Engineering			
2 Management			
3 Legal			
4 Accounting			
5 Financial			
6 Furnishing of materials and supplies			
7 Leasing of land, structures, and vehicles			
8 Purchase of equipment			
9 Construction			
10 All other services			
11 Total affiliate revenues for services rendered to respondent (lines 1 through 10)			
12 Total affiliate revenues for services rendered to other than respondents			
13 Total affiliate revenues (lines 11 and 12)			
14 Total affiliate income from operations before income taxes			

EXPLANATORY—SCHEDULE F

Purpose. Schedule F is designed to facilitate an assessment of the effect on the carriers' profits of transactions with affiliates.

Affiliate transactions aggregating less than $30,000 need not be reported in this Schedule.

Study Carrier Groupings. A separate Schedule F shall be prepared for each of the following:

1. Greyhound Lines, Inc.
2. Trailways Combined (study carriers, only)
3. All Study Carriers

Column (*b*). If the fare/charge increase is filed during the first six months of the calendar year, the data reported in column (b) shall be based on the 3rd calendar year preceding the filing year. If the fare/charge increase is filed during the last six months of the calendar year, the data reported in column (b) shall be based on the 2nd calendar year preceding the filing year.

Column (*c*). If the fare/charge increase is filed during the first six months of the calendar year, the data reported in column (c) shall be based on the 2nd calendar year preceding the filing year. If the fare/charge increase is filed during the last six months of the calendar year, the data reported in column (c) shall be based on the 1st calendar year preceding the filing year.

Column (*d*). Data to be reported in this column for the base year-actual shall be based on the 4-quarter calendar year periods identified below:

Filing month of verified statement	Four-quarter calendar year period ending
January	Sept. 30, preceding year.
February	Do.
March	Do.
April	Dec. 31, preceding year.
May	Do.
June	Do.
July	Mar. 31, filing-month year
August	Do.
September	Do.
October	June 30, filing-month year.
November	Do.
December	Do.

The 4-quarter calendar year periods identified above represent the minimum requirement. However, in event a proposed fare/charge increase is filed at a time when data for a more current quarter than that specified are obtainable, the more current may be used in the base year-actual. For example, if an increase is filed in late March and data for the 4th quarter of the preceding year is obtainable then the base year-actual ending December 31, may be used in lieu of the base year-actual ending September 30.

SCHEDULE G—SELECTED STATISTICAL DATA

[Dollars in thousands]

( ) Greyhound Lines, Inc. ( ) Trailways combined ( ) All Study carriers

Line No. and item (a)	Source (b)	1972 (c)	1973 (d)	1974 (e)	1975 (f)	1976 (g)	Cols. (h)–(l) (1977)–(1981) (h)
Operating revenues, expenses, and operating ratios:							
1 Passenger revenue	Sch. 2996, L. 1, col. (b)						
2 Special bus revenue	Sch. 2996, L. 2, col. (b)						
3 Express revenue	Sch. 2996, L. 5, col. (b)						
4 Total operating revenues	Sch. 2996, L. 9, col. (b)						
5 Total operating expenses	Sch. 2996, L. 15, col. (b)						
6 Operating ratio	Line 5 ÷ line 4						
Carrier operating property:							
7 Structures	Sch. 1200, L. 2, col. (c)						
8 Revenue equipment	Sch. 1200, L. 3, col. (c)						
9 Improvements of leasehold property.	Sch. 1200, L. 8, col. (c)						
10 Total carrier operating property	Sch. 1200, L. 11, col. (c)						
Number and cost of buses:							
11 Number of buses acquired	Sch. 1221, L. 22, col. (c)						
12 Cost of buses acquired	Sch. 1221, L. 22, col. (d)						
13 Number of buses retired	Sch. 1221, L. 22, col. (e)						
14 Cost of buses retired	Sch. 1221, L. 22, col. (f)						
15 Average age of buses [1]	Sch. 1221, L. 22, col. (i)						
Employee compensation:							
16 Total daily basis	Sch. 9002, L. 20, col. (c)						
17 Total hourly basis	Sch. 9002, L. 21, col. (c)						
Man-hours or days paid for:							
18 Total—Daily basis	Sch. 9002, L. 20, col. (e)						
19 Total—Hourly basis	Sch. 9002, L. 21, col. (e)						
Revenue bus-miles operated:							
20 Intercity service (regular route).	Sch. 9002, L. 1, col. (e)						
21 Charter, sightseeing and other special service.	Sch. 9002, L. 3, col. (e)						
22 Vehicle miles operated exclusively in baggage, mail express, and/or newspaper service.	Sch. 9002, L. 4, col. (e)						
Revenue passengers carried:							
23 Number of intercity revenue passengers carried (regular route).	Sch. 9002, L. 6, col. (b)						
24 Total number of revenue passengers carried.	Sch. 9002, L. 9, col. (b)						
Other Statistics:							
25 Number of regulator route intercity passenger miles.	Sch. 9002, L. 12, col. (b)						
26 Total passenger revenue	Sch. 9002, L. 16, col. (b)						
27 Passenger-miles per bus mile (average load).	25 ÷ L. 20						
28 Passenger-miles per passenger carried-intercity service (average journey).	25 ÷ L. 23						

[1] *Line No. 15:* The weighted average age of buses for "All Study Carriers" is computed by:

(a) Calculating the average age of buses for each study carrier.

(b) Calculating the number of buses which each study carrier has on hand at the end of the year as a percentage of the total number of buses which all study carriers as a group have on hand at the end of the year.

(c) Multiplying the average age for each study carrier by that carrier's percentage of total buses on hand at the end of the year.

(d) Summing the result of calculation (c) above for each study carrier. The summation gives the weighted average age of buses for "All Study Carriers" taken together as a group.

EXPLANATORY—SCHEDULE G

Purpose. The purpose of Schedule G is to develop selected property, labor and operational data for use in evaluating the influence and relationship of these data to the income and other financial data contained in Schedules C through F. This schedule requires data commencing with the year 1972 through 1976, and thereafter, adding each calendar year's data until a 10-year moving period is reached. A ten-year time period is useful for analyzing the industry's operations during all phases of the business cycle.

Study Carrier Groupings. Schedule G shall be prepared for each of the following:

1. Greyhound Lines, Inc.
2. Trailways Combined (study carriers, only).
3. All Study Carriers.

Column (b). The annual report sources in this column refer to the 1976 Annual Report Form MP-1. For years prior or subsequent to 1976, use comparable sources.

Columns (c) through (g). These columns refer to successive calendar years from 1972 through 1976, each ending December 31.

Columns (*h*) to (*l*). These columns refer to successive calendar years which become applicable as the time period of record is expanded to the ultimate 10 year moving time period.

APPENDIX I TO SUBPART B

Excerpt from National Bus Traffic Association's brief (pages 18-23) in I&S M-29089 increased bus passenger fares and express/rates-nationwide.

NBTA WILL UNDERTAKE THE DEVELOPMENT OF A COST ALLOCATION SYSTEM FOR MOTOR CARRIERS OF PASSENGERS

At the conclusion of the hearing in this proceeding, the Administrative Law Judge requested a discussion of the feasibility of NBTA undertaking the traffic and cost studies necessary to permit the separation of bus carrier expenses by types of service. As the record in this case indicates, no such studies have ever been undertaken and there is no present capability on the part of either the Commission or the carriers themselves to allocate total operating expenses by types of carrier service. As the testimony of Mr. Bilz reveals, data derived from traffic studies is the source of only a few of the factors which must be developed to permit the indentification of cost.[14] Consequently, the development of a carefully conceived overall cost allocation system must be accomplished first, and then a determination must be made of the types and kinds of studies needed to develop the specific factors required for implementation to the system.

At its annual meeting held in Newton, Massachusetts, on September 27-28, 1976, the members of the National Bus Traffic Association considered the question of undertaking the analyses, planning, and studies leading to the development and implementation of a cost allocation system and agreed to undertake such a program. Mr. Bilz, the cost analyst retained by the Association, has been request to work with appropriate carrier personnel and an initial meeting to outline the first steps is scheduled to be held during November of this year. In the meantime, after consultation with Mr. Bilz, we set forth the following discussion of what will be involved.

In assessing the problems and complexities involved in formulating a procedure to develop costs by types of service for the bus lines, some parallels may be drawn with the procedure which has evolved over the years for general commodity motor carriers. Cost formulas for general commodity carriers were developed by the Cost Finding Section of the Interstate Commerce Commission more than thirty years ago. These cost formulas have been modified and refined from time-to-time in order to adjust for changing operating practices and conditions, improvements in accounting technology or the need to develop costs for particular kinds of service or types of traffic. At a later point in time when the need arose in general revenue increase cases for more detailed separations of the expenses of the general commodity carriers among types of service and types of traffic, procedures were developed whereby a continuing sample of traffic data could be developed to tie in with unit costs produced by the motor carrier cost formulas.[15] Thus, the detailed separation of traffic data developed in the continuing traffic studies was designed to tie in with existing cost allocation formulas. More recently, a complete revision of the Uniform System of Accounts for general commodity motor carriers necessitated further modification of the cost formulas; however, at the same time, such revisions served to increase the amount of expenses allocated in the formulas on a direct basis and reduced the amount of expenses which could only be allocated by means of factors derived from special studies or other means.

At the present time, the bus industry has committed itself to a review of its Uniform System of Accounts, jointly with the Bureau of Accounts of the Interstate Commerce Commission, to determine the need for revising the accounts to conform more closely with generally accepted accounting principles and, most importantly, to facilitate cost finding and financial analysis. In the review and analysis of the Uniform System of Accounts, consideration should be given to possible benefits from a matrix approach in accumulating operating expenses, similar in some respects but not necessarily as detailed as the approach used in redesigning the system of accounts for general commodity carriers. The separations of expenses for bus lines need not be as detailed as those made for general commodity carriers since the needs for expense segregations are not the same. However, use of a matrix system by the bus lines to accumulate operating expenses would result in the direct assignment of various categories of expense which would otherwise be included in a common pool of expense to be allocated on the basis of the best available data. Therefore, as a necessary preliminary step toward the development of a cost allocation system for the bus lines, the Uniform System of Accounts must be examined for the purpose of identifying expenses which can be directly assigned to particular services or operations.

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[14] Tr. 183-186.

[15] Probability sampling of general freight motor carrier traffic did not develop until some 20 years after the Commission's cost formulas for truck lines.

Basically, a cost study for the bus lines involves, first, a determination of the expenses chargeable to each of the various services provided by the carriers. These services include regular route intercity service, involving transportation of passengers, express, baggage, newspapers and mail, local service and special services including charter operations and tours. Secondly, the need for further separations within these categories must be explored. An all-out study would involve the allocation of expenses for regular route service among passengers and their baggage, express traffic and all other traffic; however, such detailed separations—which can only be made by means of specially-designed allocating procedures and special studies—may not be necessary, at least in the initial design of a cost allocation system for the bus lines. From the standpoint of current and potential use to be made of cost study data, it is reasonable, at this point, to design a system which will separate expenses for regular route service involving passenger and express traffic (including baggage) on the one hand, and all other services on the other. Finally, an additional separation of the expenses for regular route service between interstate and intrastate traffic is necessary.

In connection with the first step, i.e., allocation of expenses among services, although a number of the various categories of expense incurred by the bus lines may be directly allocated to various services, there are additional items of expense which are jointly incurred in connection with two or more services and can only be separated among services on the basis of appropriate allocation factors. The same problems arise in the second and third steps, to an even greater extent, in determining the extent to which expenses assigned to a particular service must be allocated among the various types of traffic handled in that service and in making the further separation between interstate and intrastate traffic. These separations should be made by means of cost allocation factors which are functionally related to the fullest extent possible to each item of expense. This calls for the development of additional allocation factors which are not presently maintained by the bus lines.

At the present time, the carriers can accurately determine from their regularly maintained accounting records the amount of revenue accruing from regular route operations, separately for passenger and express service, and from operations in connection with charter and special service. By means of established probability sampling procedures, Greyhound and Continental Trailways can further separate passenger revenue in intercity service between interstate and intrastate traffic. Other carriers are able to make the latter separation of revenue on various bases consistent with the size of their operations. It is possible that the probability sampling procedure and other bases employed by the smaller carriers may be expanded to include statistical data as well as revenue information. The bus lines currently maintain records, for the purpose of their annual reports to the Interstate Commerce Commission, of the number of bus miles operated separately for intercity service, local service and special services. Such data will undoubtedly come into use in allocating expenses among services. Similarly, records of the number of passengers carried in various services, maintained by the bus lines, may be used in some of the expense allocations. However, no continuing records are maintained showing the number of passengers carried separately in interstate and intrastate commerce nor are any separations made of the number of passenger miles in each category. Such statistical separations are required regardless of the methodology followed in the cost study, that is, whether the separations of expenses between interstate and intrastate traffic are made within the framework of a cost allocation formula or whether the expenses in each category are developed on the basis of average mileage-related and non-mileage unit costs developed from a cost formula and applied to traffic service units developed for interstate and intrastate traffic, i.e., number of passengers and number of passenger miles.

As noted above, expenses for each type of traffic must be separated between those which are related to mileage operated and those which are not related to mileage. This brings in the problem of segregating the terminal activities of the carriers among services and types of traffic. Segregation of such expenses will probably require time and motion analyses, calculation of space utilization factors at various representative terminals and other special studies.

The formulation of a cost allocation system and the gathering of input data for the system will require an extensive amount of work and expense on the part of the bus lines. If the amount of time required in developing acceptable cost allocation procedures for general freight motor carriers is any indication, several years may be required before a cost system for the bus lines can be formulated, applied and tested. The bus industry recognizes that, because of its workload and limited staff, the Cost Finding Section of the Commission cannot take on the task of developing a cost allocation system for the bus lines as it did in connection with general freight motor carriers; however, it is hoped that the efforts of the bus lines in this regard will receive the full support and guidance of the Commission's staff so that the best possible results may be achieved in the shortest possible time.

H. G. HOMME,
Secretary.

PART 1140—REASONABLY EXPECTED COSTS UNDER 49 U.S.C. 10705a

Sec.

1140.1 Purpose and scope.
1140.2 Reasonably expected costs.
1140.3 Assignment of reasonably expected costs.
1140.4 Right of discovery.

AUTHORITY: 49 U.S.C. 10321, 11161, 11162, 11163, and 10705a; and 5 U.S.C. 559.

SOURCE: 47 FR 33703, Aug. 4, 1982, unless otherwise noted. Redesignated at 47 FR 49581, Nov. 1, 1982.

§ 1140.1 Purpose and scope.

(a) Under 49 U.S.C. 10705a, a surcharge may be imposed by any railroad on traffic originating or terminating on lines that do not carry more than one million gross ton miles of traffic per mile. A surcharge may also be applied to traffic originating or terminating on a line that does not generate more than three million gross ton miles of traffic per mile if it is operated by a railroad that is not earning adequate revenues as determined under 49 U.S.C. 10704(a)(2). These surcharges may be applied without Commission interference unless a shipper located on the line demonstrates that the surcharge would increase the carrier's share of the joint-line revenues above 110 percent of its variable cost of moving the traffic to or from the line, plus 100 percent of the carrier's reasonably expected costs of continuing to operate the line which shall include all costs necessary to sustain service on the line.

(b) 49 U.S.C. 10705a directs the Commission to define the term "reasonably expected costs" as used in this section.

§ 1140.2 Reasonably expected costs.

(a) *Definition.* The reasonably expected costs that are necessary to sustain service on a line shall be the total of the costs assigned to the line in accordance with this section.

(b) *Cost elements.* The cost assigned to the line shall be derived from the accounts included in this subsection prepared in accordance with the ICC's Uniform System of Accounts (49 CFR part 1201). The amounts included under these accounts shall be the railroad's best estimate of its anticipated costs in these areas. For those accounts that are footnoted, the basis included in the note will be used to calculate the estimated costs for these activities. The costs associated with overhead traffic are not considered to be reasonably expected costs of operating the line, and shall not be included in the total cost calculated under § 1140.2 of these regulations. However, in view of the difficulty of identifying and excluding from the operating expense accounts prescribed in § 1140.2 the costs of overhead traffic moving in mixed trains comprised of cars of both overhead traffic and traffic originating and/or terminating on the line, all costs associated with such mixed trains shall be included in such expense accounts and the *pro rata* share of the total costs (other than normalized maintenance) shall be assigned to shipments originating or terminating on the surcharged line through the proration procedures established in § 1140.3. Overhead traffic shall include all shipments that are not originated or terminated at any point on the surcharged line segment.

(1) *Maintenance of equipment.* The costs assigned to a surcharged line under this subsection are to be derived from the following accounts.

Operating expense group	Account No.
Locomotives:	
Administration	
Salaries and wages	11-21-01
Materials	21-21-01
Purchased services	41-21-01
Other expenses	61-21-01
Repairs and maintenance (Note 1)	
Salaries and wages	11-21-41
Materials	21-21-41
Repairs by other—DR	39-21-41
Repairs for others—CR	40-21-41
Purchased services	41-21-41
Other expenses	61-21-41
Machinery repair	
Salaries and wages	11-21-40
Materials	21-21-40
Repairs by others—DR	39-21-40
Repairs for others—CR	40-21-40
Purchased services	61-21-40
Other expenses	61-21-40
Equipment damaged	
Salaries and wages	11-21-48
Materials	21-21-48
Repairs by others—DR	39-21-48
Repairs for others—CR	40-21-48
Purchased services	41-21-48
Other expenses	61-21-48
Equipment damaged	
Fringe benefits (Note 2)	12-21-00
Other casualties and insurance	
Other casualties	52-21-00
Insurance	53-21-00
Lease rentals—debit	31-21-00
Lease rentals—credit	32-21-00
Joint facility rent—debit	33-21-00
Joint facility rent—credit	34-21-00
Other rents—debit	36-21-00
Other rents—credit	35-21-00
Joint facility—debit	37-21-00
Joint facility—credit	38-21-00
Depreciation (Note 3)	
Dismantling retired property	
Salaries and wages	11-21-39
Materials	21-21-39
Purchased services	41-21-39
Other expenses	61-21-39
Other	
Salaries and wages	11-21-99
Materials	21-21-99
Purchased services	41-21-99
Other expenses	61-21-99
Freight Cars:	
Administration	
Salaries and wages	11-22-01
Materials	21-22-01
Purchased services	41-22-01
Other expenses	61-22-01
Machinery repair	
Salaries and wages	11-22-40
Materials	21-22-40
Repairs by others—DR	39-22-40
Repairs for others—CR	40-22-40
Purchased services	41-22-40
Other expenses	61-22-40
Fringe benefits (Note 2)	12-22-00
Equipment damage	
Salaries and wages	11-22-48
Materials	21-22-48
Repairs by other—DR	39-22-48
Repairs for other—DR	40-22-48
Purchased services	41-22-48
Other expenses	61-22-48
Fringe benefits (Note 2)	12-22-00
Other casualties and insurance	
Other casualties	52-22-00
Insurance	53-22-00
Joint facility rent—DR	33-22-00
Joint facility rent—CR	34-22-00
Joint facility—DR	37-22-00
Joint facility—CR	38-22-00
Dismantling retired property	
Salaries and wages	11-22-39
Materials	21-22-39
Purchased services	41-22-39
Other expenses	61-22-39
Other	
Salaries and wages	11-22-99
Materials	21-22-99
Purchased services	41-22-99
Other expenses	61-22-99
Other Equipment:	
Administration	
Salaries and wages	11-23-01
Materials	21-23-01
Purchased services	41-23-01
Other expenses	61-23-01
Repair and Maintenance:	
Trucks, trailers and containers—revenue service	
Salaries and wages	11-23-43
Materials	21-23-43
Repairs by others—DR	39-23-43
Repairs for others—CR	40-23-43
Purchased services	41-23-43
Other expenses	61-23-43
Floating equipment—revenue service	
Salaries and wages	11-23-44
Materials	21-23-44
Repairs by others—DR	39-23-44
Repairs for others—CR	40-23-44
Purchased services	41-23-44
Other expenses	61-23-44
Computer and data processing	
Salaries and wages	11-23-46
Materials	21-23-46
Repairs by others—DR	39-23-46
Repairs for others—CR	40-23-46
Purchased services	41-23-46
Other expenses	61-23-46
Machinery	
Salaries and wages	11-23-40
Materials	21-23-40
Repairs by others—DR	39-23-40
Repairs for others—CR	40-23-40
Purchased services	41-23-40
Other expenses	61-23-40

Operating expense group	Account No.
Work and other non-revenue equipment	
Salaries and wages	11-23-47
Materials	21-23-47
Repairs by others—DR	39-23-47
Repairs for others—CR	40-23-47
Purchased services	41-23-47
Other expenses	61-23-47
Equipment damaged	
Salaries and wages	11-23-19
Materials	21-23-19
Repairs by others—DR	39-23-19
Repairs for others—CR	40-23-19
Purchased services	41-23-19
Other expenses	61-23-19
Fringe benefits (Note 2)	12-23-00
Other casualties and insurance	
Other casualties	52-23-00
Insurance	53-23-00
Lease rentals—DR	31-23-00
Lease rentals—CR	32-23-00
Joint facility rent—DR	33-23-00
Joint facility rent—CR	34-23-00
Other rents—DR	35-23-00
Other rents—CR	36-23-00
Depreciation	62-23-00
Joint facility—DR	37-23-00
Joint facility—CR	38-23-00
Dismantling retired property	
Salaries and wages	11-23-39
Materials	21-23-39
Purchased services	41-23-39
Other expenses	61-23-39
Other	
Salaries and wages	11-23-99
Materials	21-23-99
Purchased services.	41-23-99
Other expenses	61-23-99
(2) *Transportation:* These costs are derived from the following accounts.	
Train Operations:	
Administration	
Salaries and wages	11-31-01
Materials	21-31-01
Purchased services	41-31-01
Other expenses	61-31-01
Engine crews	
Salaries and wages (Note 4)	11-31-56
Materials (Note 5)	21-31-56
Purchased services	41-31-56
Other expenses	61-31-56
Train crews	
Salaries and wages (Note 4)	11-31-57
Materials (Note 5)	21-31-57
Purchased services	41-31-57
Other expenses	61-31-57
Dispatching trains	
Salaries and wages	11-31-58
Materials	21-31-58
Purchased services	41-31-58
Other expenses	61-31-58
Operating signals and interlockers	
Salaries and wages	11-31-59
Materials	21-31-59
Purchased services	41-31-59
Other expenses	61-31-59
Operating drawbridges	
Salaries and wages	11-31-60
Materials	21-31-60
Purchased services	41-31-60
Other expenses	61-31-60
Highway crossing protection	
Salaries and wages	11-31-61
Materials	21-31-61
Purchased services	41-31-61
Other expenses	61-31-61
Train inspection and lubrication	
Salaries and wages (Note 4)	11-31-62
Materials (Note 5)	21-31-62
Purchased services	41-31-62
Other expenses	61-31-62
Locomotive fuel	
Salaries and wages (Note 6)	11-31-67
Materials (Note 6)	21-31-67
Purchased services (Note 6)	41-31-67
Other expenses (Note 6)	61-31-67
Electric power purchased or produced for motive power (Note 7)	
Salaries and wages	11-31-68
Materials	21-31-68
Purchased services	41-31-68
Other expenses	61-31-68
Servicing locomotives	
Salaries and wages (Note 8)	11-31-69
Materials (Note 8)	21-31-69
Purchased services (Note 8)	41-31-69
Other expenses (Note 8)	61-31-69
Freight lost or damaged—solely related	51-31-00
Clearing wrecks	
Salaries and wages	11-31-63
Materials	21-31-63
Purchased services	41-31-63
Other expenses	61-31-63
Fringe benefits (Note 9)	12-31-00
Other casualties and insurance	
Other casualties	52-31-00
Insurance	53-31-00
Joint facility—DR	37-31-00
Joint facility—CR	38-31-00
Other	
Salaries and wages	11-31-99
Materials	21-31-99
Purchased services	41-31-99
Other expenses	61-31-99
Yard Operations:	
Administration	
Salaries and wages	11-32-01
Materials	21-32-01
Purchased services	41-32-01
Other expenses	61-32-01
Switch crews	
Salaries and wages (Note 4)	11-32-64
Materials (Note 10)	21-32-64
Purchased services	41-32-64
Other expenses	61-32-64

Operating expense group	Account No.
Controlling operations	
Salaries and wages	11-32-65
Materials	21-32-65
Purchased services	41-32-65
Other expenses	61-32-65
Yard and terminal clerical	
Salaries and wages	11-32-66
Materials	21-32-66
Purchased services	41-32-66
Other expenses	61-32-66
Operating switches, signals, retarders and humps	
Salaries and wages	11-32-59
Materials	21-32-59
Purchased services	41-32-59
Other expenses	61-32-59
Locomotive fuel	
Salaries and wages (Note 11)	11-32-67
Materials (Note 11)	21-32-67
Purchased services (Note 11)	41-32-67
Other expenses (Note 11)	61-32-67
Electric power purchased or produced for motive power (Note 12)	
Salaries and wages	11-32-68
Materials	21-32-68
Purchased services	41-32-68
Other expenses	61-32-68
Servicing locomotives	
Salaries and wages (Note 10)	11-32-69
Materials (Note 10)	21-32-69
Purchased services (Note 10)	41-32-69
Other expenses (Note 10)	61-32-69
Freight loss or damaged—solely related	51-32-00
Clearing wrecks	
Salaries and wages	11-32-63
Materials	21-32-63
Purchased services	41-32-63
Other expenses	61-32-63
Fringe benefits (Note 9)	12-32-00
Other casualties and insurance	
Other casualties	52-32-00
Insurance	53-32-00
Joint facility—DR	37-32-00
Joint facility—CR	38-32-00
Other	
Salaries and wages	11-32-99
Materials	21-32-99
Purchased services	41-32-99
Other expenses	61-32-99
Train and Yard Operations Common:	
Cleaning car interiors	
Salaries and wages	11-33-70
Materials	21-33-70
Purchased services	41-33-70
Adjusting and transferring loads	
Salaries and wages	11-33-71
Materials	21-33-71
Purchased services	41-33-71
Carloading devices and grain doors	
Salaries and wages	11-33-72
Materials	21-33-72
Purchased services	41-33-72
Freight lost or damaged—all other	51-33-00
Fringe benefits (Note 9)	12-33-00
Specialized Service Operations:	
Administration	
Salaries and wages	11-34-01
Materials	21-34-01
Purchased services	41-34-01
Other expenses	61-34-01
Pickup and delivery, marine line haul, and rail substitute service	
Salaries and wages	11-34-73
Materials	21-34-73
Purchased services	41-34-73
Other expenses	61-34-73
Loading and unloading and local marine	
Salaries and wages	11-34-74
Materials	21-34-74
Purchased services	41-34-74
Other expenses	61-34-74
Protective services	
Salaries and wages	11-34-75
Materials	21-34-75
Purchased services	41-34-75
Other expenses	61-34-75
Freight lost or damaged—solely related	51-34-00
Fringe benefits (Note 9)	12-34-00
Casualties and insurance	
Other casualties	52-34-00
Insurance	53-34-00
Joint facility—DR	37-34-00
Joint facility—CR	38-34-00
Other	
Salaries and wages	11-34-99
Materials	21-34-99
Purchased services	41-34-99
Other expenses	61-34-99
Administrative Support Operations:	
Administration	
Salaries and wages	11-35-01
Materials	21-35-01
Purchased services	41-35-01
Other expenses	61-35-01
Employees performing clerical and accounting functions	
Salaries and wages	11-35-76
Materials	21-35-76
Purchased services	41-35-76
Other expenses	61-35-76
Communication systems operation	
Salaries and wages	11-35-77
Materials	21-35-77
Purchased services	41-35-77
Other expenses	61-35-77
Loss and damage claims processing	
Salaries and wages (Note 13)	11-35-78
Materials (Note 13)	21-35-78
Purchased services (Note 13)	41-35-78
Other expenses (Note 13)	61-35-78
Fringe benefits (Note 13)	12-35-00
Joint facility—DR	37-35-00
Joint facility—CR	38-35-00

Operating expense group	Account No.
Casualties and insurance	
Other casualties	52-35-00
Insurance	53-35-00
Other	
Salaries and wages	11-35-99
Materials	21-35-99
Purchased services	41-35-99
Other expenses	61-35-99

(3) *General Administration:* The costs assigned to a surcharged line under this subsection are to be derived from the following accounts.

Operating expense group	Account No.
Officers—general administration	
Salaries and wages	11-61-01
Materials	21-61-01
Purchased services	41-61-01
Other expenses	61-61-01
Accounting, auditing and finance	
Salaries and wages	11-61-86
Materials	21-61-86
Purchased services	41-61-86
Other expenses	61-61-86
Management services and data processing	
Salaries and wages	11-61-87
Materials	21-61-87
Purchased services	41-61-87
Other expenses	61-61-87
Marketing	
Salaries and wages	11-61-88
Materials	21-61-88
Purchased services	41-61-88
Other expenses	61-61-88
Sales	
Salaries and wages	11-61-89
Materials	21-61-89
Purchased services	41-61-89
Other expenses	61-61-89
Industrial development	
Salaries and wages	11-61-90
Materials	21-61-90
Purchased services	41-61-90
Other expenses	61-61-90
Personnel and labor relations	
Salaries and wages	11-61-61
Materials	21-61-91
Purchased services	41-61-91
Other expenses	61-61-91
Legal and secretarial	
Salaries and wages	11-61-92
Materials	21-61-92
Purchased services	41-61-92
Other expenses	61-61-92
Public relations and advertising	
Salaries and wages	11-61-93
Materials	21-61-93
Purchased services	41-61-93
Other expenses	61-61-93
Research and development	
Salaries and wages	11-61-94
Materials	21-61-94
Purchased services	41-61-94
Other expenses	61-61-94
Fringe benefits (Note 14)	12-61-00
Casualties and insurance	
Other casualties	52-61-00
Insurance	53-61-00
Writedown of uncollectible accounts	63-61-00
Other taxes except on corporate income or payroll	65-61-00
Joint facility—DR	37-61-00
Joint facility—CR	38-61-00
Other	
Salaries and wages	11-61-99
Materials	21-61-99
Purchased services	41-61-99
Other expenses	61-61-99

(4) *Deadheading, Taxi and Hotel Costs.* The costs assigned to a surcharged line under this subsection shall be the estimated costs incurred for deadheading, taxi, and hotel costs as a result of providing service to the line.

(5) *Freight Car Costs.* (i) For Class I railroads, the on-segment costs for time-mileage freight cars shall be calculated on the basis of the surcharging carrier's average costs per day and per mile. Those freight cars that are rented on a straight mileage basis are to be costed on the surcharging carrier's average cost per mile for each type of car rented on this basis. No costs are to be included in the calculation of reasonably expected costs for private line (shipper owned) or other cars for which the railroad does not make payments. The costs per day and per mile shall be calculated separately for each type of car specified in Ex Parte No. 334, *Car Service Compensation—Basic Per Diem Charges— Formula Revision in Accordance with the [4R] Act,* (362 ICC 884). Note 15 of these regulations contains the procedure for the calculation of freight car costs. The costs assigned to a surcharged line under this subsection are to be derived from the following accounts:

Operating expense group	Account No.
Freight Car Costs: (Note 15)	
Repair and maintenance	
Salaries and wages	11-22-42
Materials	21-22-42
Repairs by others—DR	39-22-42

Operating expense group	Account No.
Repairs for others—CR	40-22-42
Purchased services	41-22-42
Other expenses	61-22-42
Lease rentals—DR	31-22-00
Lease rentals—CR	32-22-00
Depreciation	
Other rents—DR	35-22-00
Other rents—CR	36-22-00

(ii) For Class II and III railroads, the on-segment costs for time-mileage and straight mileage freight cars shall be calculated in the same manner prescribed for Class I railroads, using data from the latest calendar year available.

(6) *Locomotive Depreciation.* The depreciation cost for locomotives used on the surcharged line shall be calculated using the following procedure:

(i) The current replacement cost for each type of locomotive used to serve the line will be based on the most recent purchase of that particular type and size locomotive by the carrier or an amount quoted by the manufacturer.

(ii) The depreciation rate that will be applied to the replacement cost shall be the carrier's composite rate for locomotives as reported in the latest Annual Report Form R-1 submitted to the Commission or from company records.

(iii) The annual depreciation cost for each type of locomotive shall be calculated by multiplying the replacement cost(s) developed in paragraph (b)(6)(i) of this section by the rate from paragraph (b)(6)(ii) of this section.

(iv) The depreciation expense for each type of locomotive shall be assigned to the line on the ratio of the hours incurred serving the line to the average system locomotive unit hours in service by each of the following categories of locomotives: Yard-diesel; yard-other; road-diesel; and road-other. The ratio for each type of locomotive used to serve the line shall be the same as that developed in § 1140.2(b)(7) of these regulations.

(v) The depreciation shall be calculated by multiplying the annual depreciation expense for each type of locomotive developed in paragraph (b)(6)(iii) of this section by the ratio(s) developed in paragraph (b)(6)(iv) of this section.

(7) *Return on investment—Locomotives.* The return on investment shall be calculated for each type or classification of locomotive that is used to provide service to the line. The return for the locomotive(s) used shall be calculated in accordance with the following procedure:

(i) The current replacement cost for each type of locomotive used to serve the line at the beginning of the surcharge period shall be based on the most recent purchase of that particular type and size locomotive by the carrier indexed to the midpoint of the year or an amount quoted by the manufacturer. This unit cost shall be multiplied by 1 minus the ratio of total accumulated depreciation to original total cost of that type of equipment owned by the railroad, as shown by company records. If the carrier anticipates that additions and retirements within its locomotive fleet will occur during the surcharge period, the carrier may adjust the ratio of total accumulated depreciation to original cost to reflect this change. The adjustment shall be determined by the carrier so long as the method employed is reasonable, rational and fully explained.

(ii) The current nominal cost of capital used in the calculation of return on investment for locomotives shall be the current before-tax cost of capital, weighted to the capital structure, and adjusted for the effects of the combined statutory Federal and State income tax rates. The current cost of capital, expressed as a percent, shall be calculated as follows:

(A) The railroad shall determine its permanent capital structure ratio of debt and equity capital such that the two numbers total 100 percent. This capital structure will be the actual capital structure of the railroad. If this calculation is not possible or also not representative because the railroad is part of a conglomerate, the debt-equity ratio from the Commission's latest *Determination of Adequate Railroad Revenues* (currently Ex Parte No. 393) will be used. However, if the debt-equity ratio for the railroad industry is used, then the industry average equity rate and debt rate from the Commission's latest revenue adequacy finding must also be used in paragraphs (b)(7)(ii)(B) and (C) of this section.

(B) The current nominal cost of debt shall be the current rate quoted to the railroad for debt instruments normally used by the railroad in financing new equipment purchases, such as bonds, equipment trust certificates, et cetera. Because this is a before-tax rate there is no adjustment for income taxes.

(C) The current nominal after-tax cost of equity shall be an amount equal to that which a prudent investor would expect to earn through investments in the financial marketplace. This current nominal cost of equity shall be divided by 1 minus the combined Federal and State income tax rates. This will yield the before tax current nominal cost of equity capital.

(D) The current before-tax nominal cost of debt is multiplied by the current percentage of debt to total capital to obtain a weighted nominal before-tax cost of current debt.

(E) The current before-tax nominal cost of equity is multiplied by the current percentage of equity to total capital to obtain a weighted current before-tax cost of equity capital.

(F) The results of paragraphs (b)(7)(ii)(D) and (E) of this section are added together to calculate the current nominal cost of capital used in the calculation of the return on investment for equipment.

(iii) The annual return on investment for each type of locomotive shall be calculated as follows:

(A) The annual nominal return on investment shall be calculated by multiplying the average replacement cost developed in paragraph (b)(7)(i) of this section by the current nominal cost of capital determined in paragraph (b)(7)(ii) of this seciton.

(B) The carrier shall determine the holding gain (loss) which is projected to occur during the surcharge period.

(C) The results of paragraph (b)(7)(iii)(B) of this section is deducted from paragraph (b)(7)(iii)(A) of this section to determine the annual return on investment.

(iv) The return on investment for each type of locomotive shall be assigned to the line on a ratio of the locomotive unit hours on the line to the average locomotive unit hours per unit for each type of locomotive in the system. This ratio will be developed as follows:

(A) The carrier shall estimate the number of hours that each type of locomotive will incur in serving the line during the period.

(B) The railroad shall develop the system average locomotive unit hours per unit for each of the following types of locomotives: Yard-diesel; yard-other; road-diesel; and road-other.

(C) The ratio applied to the return on investment is calculated by dividing the hours that each type of class of locomotive incurs serving the line, as developed in paragraph (b)(7)(iv)(A) of this section, by the system average locomotive unit hours per unit for the applicable type developed in paragraph (b)(7)(iv)(B) of this section.

(v) The cost assigned to the line for each type of locomotive shall be calculated by multiplying the annual return on investment developed in paragraph (b)(7)(iii) of this section by the ratio(s) developed in paragraph (b)(7)(iv) of this section.

(8) *Normalized maintenance.* The maintenance-of-way and structure that is assignable to the line shall be the normalized maintenance that is necessary to permit the continuation of the right-of-way and structures in their present condition. Amounts included under this subsection shall only consider the traffic that originates and/or terminates on the surcharged line. In addition to the track and right-of-way this amount shall also include, but not be limited to, the maintenance of highway grade crossings, signal systems, communication systems, tunnels, bridges, culverts, electric power systems, station structures and other facilities that are located on the line. The surcharging railroad must certify at the time it files the surcharges that all amounts that are included for normalized maintenance in the calculation of the surcharge shall be expended within twelve (12) months of the effective date of the surcharge.

(9) *Revenue taxes.* The amount of revenue taxes shall be computed based

on the estimated amounts that would be paid in those States that subject the railroad to a revenue tax.

(10) *Property taxes.* (i) The amount of property taxes shall be the estimated amount levied against the property on the line in those States where a true ad valorem tax is levied, based on the value of certain kinds of railroad property, such as track, land, buildings, and other facilities.

(ii) In States where property taxes are assessed on the basis of a formula of a State-wide valuation of property and the line segment is included in the valuation of the railroad operating the service, the tax on the line segment shall be based on the distribution of the assessment by the State to that line and the application of the appropriate tax rate or rates.

(iii) In States where the real property taxes are assessed and levied against the owner of the property but the rolling stock is assessed to the railroad operating the service on the basis of a formula of a State-wide valuation of property, the tax on rolling stock attributable to the line segment shall be determined as follows:

(A) Find the percent which the cost of equipment as used in the formula is to the total of all property cost as used in the formula;

(B) Apply that percentage to the total State assessment to determine the portion of the assessment attributable to rolling stock;

(C) Allocate the rolling stock assessment thus determined to the line on the basis of car and locomotive unit miles on the line to total car and locomotive unit miles in the state;

(D) Apply the appropriate tax rate or rates to the allocated assessment thus determined.

(11) *Rehabilitation.* Rehabilitation costs shall be included at the option of the railroad for any track that does not meet minimum Federal Railroad Administration (FRA) Class I Safety Standards (49 CFR part 213). The surcharging railroad may petition FRA for a waiver and operate the line at less than FRA Class I conditions. The surcharging railroad must certify at the time it files the surcharge with the Commission that the upgrading to FRA Class I safety standard (49 CFR part 213), on which the rehabilitation costs are predicated will be expended within twelve (12) months of the effective date of the surcharge.

(12) *Return on value of rail properties.* The return on the value of the rail properties that are necessary to sustain service on the line shall be estimated using the procedure shown below. The rail properties under this subsection shall include land plus any rights of way owned by the surcharging railroad.

(i) *Valuation of rail properties.* The carrier shall determine the investment base to which the return element is applied. The investment base shall be the sum of:

(A) The net liquidation value, at the beginning of the surcharge period, of the rail properties that have no further value for railroad proposes and the market value, at the beginning of the surcharge period, for those materials that have remaining value for railroad purposes. The net liquidation value shall be deemed as their highest and best use for nonrail purposes. This amount shall be determined by computing the estimated appraised value of such properties, less all costs (dismantling and disposition of improvements) necessary to make the remaining properties available for their highest and best use and complying with applicable zoning, land use, and environmental regulations. The market value shall be the estimated sales value of the assets based on their remaining useful life less all cost of dismantling. No amounts shall be included that are the results of investments of state DOT's, shippers or parties other than the surcharging railroad. In addition, properties to which the railroad does not have title, such as those with reversionary rights, shall also be excluded. If the carrier anticipates that additions and retirements in the investment base of the line will occur during the surcharge period, the carrier may adjust the investment base to reflect this change. The adjustment shall be determined by the carrier so long as the method employed is reasonable, rational and fully explained.

(B) The allowable working capital computed at 15 days cash costs (on-branch costs less depreciation).

(C) The amount of current income tax benefits the carrier would realize were it to abandon the line which would have been applicable to the period of the surcharge. (Conversely, if the railroad would incur an income tax liability from abandonment, the liability should be deducted from the investment base.)

(ii) *Rate of return.* The railroad's cost of capital shall be the current before-tax cost of capital, weighted to the capital structure, and adjusted by the effects of the combined statutory Federal and State income tax rates. This rate of return, expressed as a percent, shall be calculated as follows:

(A) The railroad shall determine its permanent capital structure ratio for debt and equity capital such that the two numbers total 100 percent. This capital structure will be the actual capital structure of the railroad. If this calculation is not possible or also not representative because the railroad is part of a conglomerate, the debt-equity ratio from the Commission's latest *Determination of Adequate Railroad Revenues* (currently No. Ex Parte No. 393) will be used. However, if the debt-equity ratio for the railroad industry is used then the industry average equity rate and debt rate from the Commission's latest revenue adequacy finding must also be used in paragraphs (b)(12)(ii)(B) and (C) of this section.

(B) The current nominal cost of debt shall be determined by taking the average of all debt instruments (including bonds, equipment trust certificates, financial lease arrangements, et cetera) issued by the carrier in the most recent 12-month period. The debt cost calculated by this procedure is a before-tax rate and is not adjusted for income taxes.

(C) The current nominal after-tax cost of equity shall be an amount equal to that which a prudent investor would expect to earn through investments in the financial market place. The current after-tax nominal cost of equity is divided by 1 minus the combined statutory Federal and State income tax rates. This will develop the current nominal cost of equity on a before-tax basis.

(D) The current nominal before-tax cost of debt is multipled by the current percentage of debt to total capital to obtain a weighted current nominal before-tax cost of debt.

(E) The current nominal before-tax cost of equity is multipled by the current percentage of equity to total capital to obtain a weighted current nominal before-tax cost of equity.

(F) The results of paragraphs (b)(12)(ii)(D) and (E) of this section are added together to determine the current cost of capital.

(iii) *Return on value.* The return on value that shall be included in the cost of sustaining service is calculated as follows:

(A) The current return on value is calculated by multiplying the value of the properties at the beginning of the surcharge period, as determined in paragraph (b)(12)(i) of this section, by the current cost of capital determined in paragraph (b)(12)(ii) of this section.

(B) The carrier shall determine the holding gain (loss) which is projected to occur, during the surcharge period, in the carrier's property investment in the line.

(C) The result of paragraph (b)(12)(iii)(B) of this section is deducted from paragraph (b)(12)(iii)(A) of this section to determine the annual return on investment.

NOTES

Note 1. Maintenance of equipment—Locomotive repairs and maintenance: All accounts designated XX-21-41 shall be separated between yard and road with a further separation between diesel and other (electric). The costs for these accounts for yard locomotives shall be assigned to the segment separately for diesel and electric locomotives on the basis of the ratio of segment diesel and electric yard locomotive unit-hours to the total system diesel and electric yard locomotive unit hours. The costs for these accounts for road locomotives shall be assigned to the segment separately for diesel and electric locomotives on the basis of the ratio of segment diesel and electric locomotive gross ton-miles in road service to the total system diesel and electric locomotive gross ton-miles in road service. The costs assigned under these accounts for specialized equipment devoted exclusively to segment line service shall be the estimated costs for the specific equipment used.

Note 2. Fringe Benefits: Fringe benefits for locomotives and other equipment shall be assigned to the segment of the ratio that the total segment salary and wages bear to the system total salaries and wages for each type of equipment as follows:

(A) Locomotives—Account 12-21-00: total of all 11-21-XX accounts segment to system.

(B) Other Equipment—Account 12-23-00: total of all 11-23-XX accounts segment to system.

(C) Fringe benefits for freight cars shall be calculated by first estimating the total in Account 11-22-42 (Freight car repairs-salaries and wages) that is included in the total on segment costs for freight cars as determined from the car-day and car-mile cost calculations, in § 1140.2(b)(5) of these regulations.

To this amount is added the segment cost in the balance of all 11-22-XX accounts. The ratio of this total segment amount to the system total for all 11-22-XX accounts is applied to Account 12-22-00 (Fringe Benefits-Freight Cars).

Note 3. Locomotive Depreciation: Locomotive costs shall not include depreciation as determined in Account No. 62-21-00. Locomotive depreciation shall be calculated in the manner set forth in § 1140.2(b)(6) of these regulations.

Note 4. Labor costs: (1) The salaries, wages and fringe benefits of train and engine crews exclusively assigned to the line segment shall be deemed attributable costs of the segment. Train and engine crews not exclusively assigned to the line segment shall have their salaries, wages and fringe benefits deemed attributable costs of the segment to the extent their salaries, wages and fringe benefits are shown to be apportionable to the segment.

Note 5. Transportation—(1) Train Operations—(A) Engine Crews-Materials, Account 21-31-56; Train Crews-Materials. Account 21-31-57; Train Inspection and Lubrication—Salaries and Wages, Account 11-31-62; and Materials, Account 21-31-62: If the line segment is served by a local/way or through train crew, the costs in these accounts shall be assigned to the segment on the ratio of train hours on the segment to the total system train hours.

Note 6. Transportation—Locomotive Fuel: All accounts designated XX-31-67 shall be assigned to the segment on the ratio of road diesel locomotive unit hours.

Note 7. Transportation—Electric Power Purchased or Produced for Motive Power: All accounts designated XX-31-68 shall be assigned to the segment on the ratio of road electric locomotive unit hours on the segment to the total system road electric locomotive unit hours.

Note 8. Transportation—Servicing Locomotives: All accounts designated XX-31-69 shall be assigned to the segment on the ratio of road locomotive unit miles on the segment to the total system road locomotive unit miles.

Note 9. Transportation Fringe Benefits: Fringe benefits shall be assigned to the segment separated between train operations, yard operations, train and yard operations common, specialized service operations, and administrative support operations. The costs for each activity shall be assigned to the segment on the ratio that the total segment salary and wages bear to the total system salary and wages for each activity shown below:

(A) Train Operations, Account 12-31-00: total of all 11-31-XX accounts segment to system.

(B) Yard Operations, Account 12-32-00: total of all 11-32-XX accounts segment to system.

(C) Train and Yard Operations Common, Account 12-33-00: total of all 11-33-XX accounts segment to system.

(D) Specialized Service Operations, Account 12-34-00: total of all 11-34-XX accounts segment to system.

(E) Administrative Support, Account 12-35-00: total of all 11-35-XX accounts segment to system.

Note 10. Yard Operations—(A) Switch Crews-Materials, Account 21-32-64, and Servicing Locomotives, all accounts designated XX-32-69: The costs for these accounts shall be assigned to the segment on the ratio of yard locomotive unit hours on the segment to the system total yard locomotive unit hours.

Note 11. Yard Operations—Locomotive Fuel: All accounts designated XX-32-67 shall be assigned to the segment on the ratio of yard diesel locomotive unit hours on the segment to the total system yard diesel locomotive unit hours.

Note 12. Yard Operations—Electric Power Purchased or Produced for Motive Power: All accounts designated XX-32-68 shall be assigned to the segment on the ratio of yard electric locomotive unit hours on the segment to the total system yard electric locomotive unit hours.

Note 13. Administrative support operations—Loss and Damage Claims Processing: All accounts designated XX-35-78 shall be assigned to the segment on the ratio of the number of claims processed for loss or damage occurring on the segment to the total number of claims processed by the railroad.

Note 14. General administrative—Fringe Benefits, Account 12-61-00: This account shall be assigned to the segment on the ratio that the total segment salary and wages in all 11-61-XX accounts bear to the system total salary and wages in all 11-61-XX accounts.

Note 15. (1) The system total of the repair and maintenance accounts, all accounts designated XX-XX-42, and depreciation shall be divided into time-related costs and mileage-related costs on the basis of the present "Rail Form A: apportionment factors (i.e., 50 percent time and 50 percent mileage for repairs; and 60 percent time and 40 percent mileage for depreciation). Freight car costs shall not include depreciation as determined in Account No. 62-22-00. Freight car depreciation shall be calculated in the manner set forth in subparagraph (C)(i) of this note.

(2) The system total receipts and payments for the hire of time-mileage cars, and the basic data used in the development of the car-day and car-mile factors, shall be taken from the surcharging carrier's latest Form R-1 and company records. The specific steps to complete the calculation are as follows:

(A) The total system car-days by car type shall be calculated by: (i) Averaging the surcharging carrier's freight car ownership at the beginning and end of the year (Form R-1, schedule 710, columns (b) and (k)); (ii) multiplying the average by the standard active number of car-days (346) as developed in ICC Docket NO. 31358; (iii) subtracting car-days on foreign lines (source: Company records); and (iv) adding the foreign car-days on home line (source: Company records). This procedure shall be followed for each car-type specified in Ex Parte No. 334, supra.

(B) The total railroad car-miles shall be calculated by adding the loaded car-miles for the surcharging carrier's owned and leased cars (Form OSA, column (d), items 5-010 through 5-027) to the empty car-miles for the surcharging carrier's owned or leased cars (Form OSA, column (d), items 5-110 through 5-127). The total car-miles, loaded and empty, shall be calculated for each car-type specified in Ex Parte No. 334, supra.

(C) The cost per car-day shall be calculated for each type of time-mileage car by adding 50 percent of the total freight car repair costs for each type (Form R-1, schedule 415, column (b)), and 60 percent of the depreciation that shall be developed as follows:

(i) The current value for each type of car shall be calculated by first arriving at the current cost per car at the beginning of the surcharge period using the most recent purchase of this type of car by the railroad indexed to the midpoint of the year or an amount quoted by the manufacturer. This cost per car shall be multiplied by the number of cars of that type in the carrier's car fleet at the beginning of the surcharge period as shown by company records, to determine the investment in this type of equipment. The investment in this type of car shall be multiplied by the composite depreciation rate for that type of car as shown in the latest annual report filed with the Commission or company records.

(ii) Add the return on investment which shall be determined as follows:

(A) Multiply the current value of each type of car, developed in subparagraph (i) of this note, by one minus the ratio of accumulated depreciation to the total original cost investment of that type of car owned by the railroad. If the carrier anticipates that additions and retirements of this particular type of car will occur during the surcharge period, the carrier may adjust the investment to reflect this change. The adjustment shall be determined by the carrier so long as the method employed is reasonable, rational and fully explained. The return on investment is determined by multiplying the net current value by the rate of return calculated for locomotives in § 1140.2(b)(7).

(B) The carrier shall determine the holding gain (loss) which is projected to occur, during the surcharge period, in the carrier's property investment in the line.

(C) The result of subparagraph (B) of this note is deducted from subparagraph (A) of this note to determine the return on investment.

(iii) To the amounts for repairs, depreciation, and return on investment add the time portion of the railroad's payment for hire of time-mileage freight cars (Form R-1, schedule 414, columns (h) and (i)); and subtract the time portion of the railroad's receipts for hire of time mileage freight cars (Form R-1, schedule 414, columns (d) and (e)). The total of these costs is divided by the total car-days for each type developed in subparagraph A of this note.

(D) The cost per mile shall be calculated for each type of time-mileage car as follows. First, add: (i) 50 percent of the total freight train car repair cost for each car-type (Form R-1, schedule 415, column (b)); (ii) 40 percent of the total depreciation costs for each car-type developed in subparagraph (C)(i); and (iii) the mileage portion of the surcharging carrier's payments for the hire of time-mileage freight cars (Form R-1, schedule 414, column (g)). Then, subtract the mileage portion of the surcharging carrier's receipts for hire of time-mileage freight cars (Form R-1, schedule 414, column (c)). Finally, divide the result by the total car-miles for each car-type developed in subsection (B), above.

(E) The costs per car-day and per car-mile developed in subsections (C) and (D), above, shall be applied to the total car-days and total car-miles for each car-type accumulated on the line segment for all traffic originated and/or terminated on the segment plus those freight cars that bridge the line segment which are attributed to time-mileage freight train cars.

The on-segment costs for freight cars rented on a straight mileage basis shall be the surcharging railroad's total payments for mileage cars (Form R-1, schedule 414, column (f)), for each car-type divided by the total miles on which the charges were based.

[47 FR 33703, Aug. 4, 1982. Redesignated at 47 FR 49581, Nov. 1, 1982 and amended at 49 FR 37385, Sept. 24, 1984; 50 FR 946, Jan. 8, 1985; 53 FR 46088, Nov. 16, 1988; 53 FR 49990 and 49991, Dec. 13, 1988; 53 FR 51626, Dec. 22, 1988]

§ 1140.3 Assignment of reasonably expected costs.

Reasonably expected costs as determined in § 1140.2 of these regulations shall be assigned to each shipment that originates or terminates on the surcharged line on any basis that is equitable and does not result in any shipper bearing a disproportionate share of the reasonably expected costs. However, the railroad shall not apportion the reasonably expected costs on the basis of the Commission's Rail Form A cost procedure or its successor. In the case where the total reasonably expected costs calculated under § 1140.2 include costs associated with the transportation of overhead traffic contained in mixed trains as defined in § 1140.2, the following procedure shall be employed to assign reasonably expected costs to shipments originating and/or terminating on the line:

(a) The total revenue ton-miles for all traffic (originated and terminated plus overhead traffic in mixed trains) is divided into the revenue ton-miles of shipments that originate and/or terminate on the line to derive the O&T assignment factor.

(b) The adjusted reasonably expected costs shall be determined by subtracting the Normalized Maintenance determined in § 1140.2(b)(8) from the total costs determined under § 1140.2(b).

(c) The reasonably expected costs of O&T traffic shall be determined by multiplying the adjusted reasonably expected costs from paragraph (b) above by the O&T assignment factor from paragraph (a) above and adding to this amount the normalized maintenance from § 1140.2(b)(8).

[49 FR 37386, Sept. 24, 1984]

§ 1140.4 Right of discovery.

In applying the Commission's discovery process (§ 1114.21) to discovery under these rules, the Commission is waiving the requirement that a party first seek the Commission's permission to request discovery. The railroad's failure to respond to a reasonable discovery request will be handled under the procedures contained in § 1114.31.

PART 1141—PROCEDURES TO CALCULATE INTEREST RATES

AUTHORITY: 49 U.S.C. 10321; 5 U.S.C. 553.

§ 1141.1 Procedures to calculate interest rates.

Interest rates to be computed following a Commission decision shall be the average yield (investment rate) of marketable securities of the United States Government having a duration of 90 days. The interest rate level shall be determined by:

(a) The date that statement is filed accounting for all amounts received under the new rates in investigation [*See* 49 U.S.C. 10707(d)(1)], or

(b) The date the first unlawful charge is paid, for all other proceedings.

[48 FR 44827, Sept. 30, 1983]

PART 1142—SPECIAL RULES FOR FILING AND HANDLING COMPLAINTS AGAINST BUS RATES AND FARES UNDER THE ZONE OF RATE FREEDOM (49 U.S.C. 10708(d)(4), 10708(d)(5), 10708(e), SECTION 11 OF THE BUS REGULATORY REFORM ACT OF 1982)

Sec.
1142.1 Filing of complaint.
1142.2 Answer by defendant.
1142.3 Reply by complainant.
1142.4 Discovery.
1142.5 Copies.

AUTHORITY: Sec. 11(c) of the Bus Regulatory Reform Act of 1982, Pub. L. 97-261, 96

Stat. 1102; 49 U.S.C. 10321, 10708(f), and 11701; and 5 U.S.C. 553.

SOURCE: 48 FR 44830, Sept. 30, 1983, unless otherwise noted.

§ 1142.1 Filing of complaint.

(a) A person seeking the cancellation of an effective rate or fare published by an intercity motor carrier of passengers under provisions of the zone of rate freedom shall file a formal complaint. The complaint may challenge only the reasonableness of the rate or fare under these special rules. Complaints on other grounds, such as discrimination or predatory practices, shall be filed under other sections of 49 CFR part 1131.

(b) A formal complaint must contain the correct, unabbreviated names and addresses of each complainant and defendant. It should set forth briefly and in plain language the facts upon which it is based. It should include specific reference to pertinent statutory provisions and Commission regulations, and should advise the Commission and the defendant fully in what respects these provisions or regulations have been or are violated or will be violated. The complaint should contain a detailed statement of the relief requested. Relief in the alternative or of several different types may be demanded, but the issues raised should not be broader than those to which complainant's verified statement is directed.

(c) Complainant's verified statement of facts and argument shall be filed simultaneously with its complaint, and they shall constitute complainant's case-in-chief. Whatever evidence is relied upon shall be set forth in sufficient detail to support the complaint, such as cost of service, rate or fare comparisons, or other information which may be pertinent (such as type of service rendered, distance traveled, or patronage experienced).

(d) Complainant shall serve a copy of its complaint and a copy of its verified statement on defendant on the same day that these pleadings are filed with the Commission. Such service and filing shall comply with § 1104.12.

[48 FR 44830, Sept. 30, 1983, as amended at 49 FR 44527, Sept. 30, 1984]

§ 1142.2 Answer by defendant.

The answer to the complaint shall contain the entire case-in-rebuttal, consisting of defendant's verified statement of facts and argument. It shall be filed within 20 days of the filing by complainant of the complaint and the verified statement. Defendant shall serve a copy of its statement on complainant on the same day it is filed with the Commission. Such service and filing shall comply with § 1104.12.

§ 1142.3 Reply by complainant.

Complainant may file a reply to defendant's answer within 10 days after the defendant's answer is due. The reply may include evidence obtained by the complainant in response to a request for discovery. Defendant may file a reply within 5 days after complainant's reply is due to such evidence obtained on discovery which is not contained in the complaint and which complainant seeks to include in the record at this time. A reply shall be served on the parties on the same day it is filed with the Commission and comply with § 1104.12.

§ 1142.4 Discovery.

Discovery procedures shall be available to the complainant pursuant to our rules at § 1114.21, so long as the request is made at the same time the complaint is filed and seeks relevant information needed to support the complaint. Unless otherwise directed by the Commission, defendant (a) shall respond within 5 days, and (b) shall produce relevant information which is readily available. Defendant shall not be required to prepare and produce cost, traffic, financial, economic or other data not previously prepared. Defendant shall not be required to produce privileged information.

§ 1142.5 Copies.

An original and 10 copies of the complaint, statements, answer, replies, and discovery requests shall be furnished for the use of the Commission.

PART 1143—PREEMPTION OF STATE JURISDICTION: PASSENGER RATES

Sec.

1143.1 Applicability.
1143.2 Commission jurisdiction.
1143.3 Petition.
1143.4 Notification procedures.
1143.5 Opposition; deadlines.
1143.6 Rebuttal.

AUTHORITY: 49 U.S.C. 10321 and 11501(e); 5 U.S.C. 553.

SOURCE: 55 FR 11203, Mar. 27, 1990, unless otherwise noted.

§ 1143.1 Applicability.

These rules govern petitions for review, under 49 U.S.C. 11501, of State regulation of rates, rules, and practices of interstate passenger carriers providing intrastate service. (Commission preemption of State jurisdiction over passenger exit is covered at 49 CFR part 1169.)

§ 1143.2 Commission jurisdiction.

If an interstate passenger carrier has requested of a proper State authority permission to establish an increased intrastate rate, rule, or practice and all or part of the request has been denied, or the State has not taken final action (in whole or in part) on the request within 120 days, the carrier may petition the Interstate Commerce Commission for review.

§ 1143.3 Petition.

A petition for review shall include the following:

(a) A cover sheet indicating that the filing is authorized under 49 U.S.C. 11501 and that a decision must be made within 60 days.

(b) One copy of the entire State record, if available, and other, new relevant evidence. (No additional copies of the State record need be furnished for the Commission's use. Copies of the State record need not be furnished to the Governor, State authority, or other parties of record.) If the basis for the petition is State inaction, petitioner shall also submit a statement by counsel or a verified statement by a competent witness that the State has not acted within 120 days after the request.

(c) Other new, relevant evidence and written argument detailing reasons for review.

(d) Certification that the notification procedures at § 1143.4 have been met.

§ 1143.4 Notification procedures.

The petition for review shall be served, no later than its filing date, on the State Governor, the State authority, and on all parties to the State proceeding.

§ 1143.5 Opposition; deadlines.

Opposition statements may be filed as a matter of right by the Governor, the State authority, or by any party to the State proceeding within 15 days after the petition is filed. All others wishing to participate shall file a petition for leave to intervene within 15 days after the filing. Opposition statements and petitions to intervene shall include argument establishing that the State action was reasonable and may also address any new evidence submitted by petitioner. Petitions to intervene shall also explain why an appearance was not entered in the State proceeding but is appropriate in the Commission proceeding.

§ 1143.6 Rebuttal.

Rebuttal to an opposition statement shall be filed within 20 days after the petition is filed. Rebuttal to an intervention petition shall be filed within 10 days after such petition is filed.

PART 1144—INTRAMODAL RAIL COMPETITION

Sec.

1144.1 Notification, explanation, and justification.
1144.2 Negotiation.
1144.3 Suspension.
1144.4 Investigation of proposed cancellations.
1144.5 Prescription.
1144.6 General.

AUTHORITY: 49 U.S.C. 10321, 10703, 10705, 10707 and 11103; and 5 U.S.C. 553.

SOURCE: 50 FR 46066, Nov. 6, 1985, unless otherwise noted.

§ 1144.1 Notification, explanation, and justification.

(a) *Notification.* A rail carrier proposing to cancel a through route and/or a joint rate shall comply with the requirements of 49 U.S.C. 10762(c)(3) and 10705a(f), as appropriate, and 49 CFR part 1312, and shall give notice of its intent to make such a cancellation 45 days prior to the effective date of the cancellation. For cancellations under 49 U.S.C. 10765(e), the 45-day period must consist of at least a 25-day notice of intent to file followed by a 20-day tariff filing in compliance with 49 U.S.C. 10762(c)(3).

(b) *Explanation and justification*—(1) *Request.* After a rail carrier has given notice of a proposed cancellation, any affected party may ask the canceling rail carrier to:

(i) Explain how the proposed cancellation will affect the party, and

(ii) Justify the application of the cancellation to a route or rate actively used by or participated in by the party.

(2) *Reply.* The rail carrier proposing the cancellation must give the party the requested explanation and justification, including pertinent mileage and cost data, within 10 days of the date the request is made.

(3) *Time.* By mutual agreement, the rail carrier proposing the cancellation and the affected party may alter the time frames of paragraph (b)(2) of this section. The 49 CFR part 1132 time periods for protests and replies apply.

(4) *Content.* The content of the request and reply (other than pertinent mileage and cost data) will be left to the parties, though all information pertinent to the individual case should be included. The failure to provide information necessary to analyze the action under the criteria established in § 1144.3 may be treated as an admission against interest.

[50 FR 46066, Nov. 6, 1985; 51 FR 18333, May 19, 1986]

§ 1144.2 Negotiation.

(a) *Timing.* At least 5 days prior to challenging a cancellation of a through route or joint rate, or seeking the prescription of a through route, joint rate, or reciprocal switching, the party intending to initiate such action must first seek to engage in negotiations to resolve its dispute with the prospective defendants.

(b) *Participation.* Participation or failure to participate in negotiations does not waive a party's right to file a timely request for suspension and/or investigation or prescription.

(c) *Arbitration.* The parties may use arbitration as part of the negotiation process, or in lieu of litigation before the Commission.

§ 1144.3 Suspension.

(a) *General.* Under these rules the Commission will suspend and investigate, investigate, or not suspend and investigate a proposed cancellation of a through route and/or joint rate. A persuasive presentation under all of the criteria below is sufficient for the Commission to determine that the requirements of 49 U.S.C. 10707(c)(1) have been met warranting suspension and investigation of the proposed cancellation. Failure to convince the Commission on any one of the criteria may result in either only an investigation (no suspension) or a determination not to investigate. This will be decided on a case-by case basis.

(b) *Statutory factors.* A decision under (a) will be made based on the broad factors in 49 U.S.C. 10707(c)(1). The criteria considered in analyzing the factors in 49 U.S.C. 10707(c)(1) (A and B) are in paragraph (c) of this section. The requirements to keep account under 49 U.S.C. 10707(c)(1)(C) cannot be applied to cancellation cases, and will not be considered.

(c) *Criteria.* The Commission will suspend and investigate if a protestant shows:

(1) The cancellations of a through route and/or joint rate would eliminate effective railroad competition for the affected traffic between the origin and destination. Among other evidence, the Commission will consider two rebuttable presumptions to show the elimination of effective railroad competition: (i) That the mileage between the origin and destination over the route to be canceled is not more than that of any feasible alternative rail route; and (ii) that the cost of op-

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erating via the route to be canceled is not more than that of any feasible alternative rail route; and

(2) Either (i) a protesting shipper has used or would use the through route and/or joint rate proposed to be canceled to meet a significant portion of its current or future railroad transportation needs between the origin and destination; or

(ii) A protesting carrier has used or would use the affected through route and/or joint rate for a significant amount of traffic.

§ 1144.4 Investigation of proposed cancellations.

(a) *General.* The Commission shall determine that a proposed cancellation of a through route and/or joint rate is contrary to the public interest under 49 U.S.C. 10705 if it finds that the cancellation, or a rate that would remain in place after the cancellation, is contrary to the competition policies of 49 U.S.C. 10101a or is otherwise anticompetitive.

(b) *Factors.* In making its determination, the Commission will take into account all relevant factors, including:

(1) The revenues of the involved railroads on the affected traffic via the rail routes in question.

(2) The efficiency of the rail routes in question, including the costs of operating via those routes.

(3) The rates charged or sought to be charged by the canceling railroad or railroads.

(4) The revenues, following the cancellation, of the involved railroads for the traffic in question via the affected through route; the costs of the involved railroads for that traffic via that route; the ratios of those revenues to those costs; and all circumstances relevant to any difference in those ratios; provided that the mere loss of revenue to an affected carrier will not be a basis for finding that a cancellation is antic-competitive.

(c) *Other considerations.* (1) The Commission will not consider product competition.

(2) If a railroad wishes to rely in any way on geographic competition, it will have the burden of proving the existence of effective geographic competition by clear and convincing evidence.

(3) Where a cancellation has been determined to be contrary to the competitive standards of this section, the overall revenue inadequacy of the canceling carrier will not excuse such a cancellation.

(4) Any investigations of proposed cancellations under the terms of this paragraph will be conducted and concluded by the Commisson on an expedited basis.

§ 1144.5 Prescription.

(a) *General.* A through route or a through rate shall be prescribed under 49 U.S.C. 10705, or a switching arrangement shall be established under 49 U.S.C. 11103, if the Commission determines:

(1) That the prescription or establishment (i) is necessary to remedy or prevent an act that is contrary to the competition policies of 49 U.S.C. 10101a or is otherwise anticompetitive, and (ii) otherwise satisfies the criteria of 49 U.S.C. 10705 and 11103, as appropriate. In making its determination, the Commission shall take into account all relevant factors, including:

(A) The revenues of the involved railroads on the affected traffic via the rail routes in question.

(B) The efficiency of the rail routes in question, incuding the costs of operating via those routes.

(C) The rates or compensation charged or sought to be charged by the railroad or railroads from which prescription or establishment is sought.

(D) The revenues, following the prescription, of the involved railroads for the traffic in question via the affected route; the costs of the involved railroads for that traffic via that route; the ratios of those revenues to those costs; and all circumstances relevant to any difference in those ratios; provided that the mere loss of revenue to an affected carrier shall not be a basis for finding that a prescription or establishment is necessary to remedy or prevent an act contrary to the competitive standards of this section; and

(2) That either:

(i) The complaining shipper has used or would use the through route, through rate, or reciprocal switching to meet a significant portion of its current or future railroad transportation needs between the origin and destination; or

(ii) The complaining carrier has used or would use the affected through route, through rate, or reciprocal switching for a significant amount of traffic.

(b) *Other considerations.* (1) The Commission will not consider product competition.

(2) If a railroad wishes to rely in any way on geographic competition, it will have the burden of proving the existence of effective geographic competition by clear and convincing evidence.

(3) When prescription of a through route, a through rate, or reciprocal switching is necessary to remedy or prevent an act contrary to the competitive standards of this section, the overall revenue inadequacy of the defendant railroad(s) will not be a basis for denying the prescription.

(4) Any proceeding under the terms of this section will be conducted and concluded by the Commission on an expedited basis.

§ 1144.6 General.

(a) These rules will govern the Commission's adjudication of individual cases pending on or after the effective date of these rules (October 31, 1985).

(b) These rules supersede the rules at 49 CFR part 1132 to the extent they are inconsistent.

(c) Discovery under these rules is governed by the Commission's general rules of discovery at 49 CFR part 1114.

(d) Any Commission determinations or findings under this part with respect to compliance or non-compliance with the standards of §§ 1144.4 and 1144.5 shall not be given any *res judicata* or collateral estoppel effect in any litigation involving the same facts or controversy arising under the antitrust laws of the United States.

PART 1145—RAILROAD RATES ON RECYCLABLE COMMODITIES

Sec.
1145.1 Definitions.
1145.2 Purpose.
1145.3 Annual proceedings: submission of evidence.
1145.4 Annual proceedings: Commission decision.
1145.5 Regulation of rate increases.
1145.6 Propsective effect.
1145.7 Application of railroad cost recovery procedures.

AUTHORITY: 49 U.S.C. 10321, 10731, and 1070a; 5 U.S.C. 553.

SOURCE: 54 FR 42509, Oct. 17, 1989, unless otherwise noted.

§ 1145.1 Definitions.

(a) For the purpose of this part, *recyclable commodities* means recyclable material as defined at 49 U.S.C. 10731(a)(1), other than recyclable or recycled iron or steel. Commodities are to be specified at the five digit Standard Transportation Commodity Code (STCC) level, unless exceptions are requested and justified as provided in § 1145.3(a).

(b) *Costs determined pursuant to 49 U.S.C. 10705a(m)* means "unadjusted costs" calculated pursuant to the procedures developed in Ex Parte No. 389, *Procedures for Requesting Rail Variable Cost and Revenue Determinations for Joint Rates Subject to Surcharge and Cancellation*, as amended, with two exceptions. For the purpose of this part, parties are to use actual shipment weight as shown in the waybill file (rather than tariff minimum weight), and route miles as calculated in the Princeton Railroad Network model and entered in the waybill file (rather than short line miles increased for circuity).

(c) *Statutory cap level* means the railroad revenue-to-variable-cost ratio level referred to in 49 U.S.C. 10731(e).

(d) *Above-cap rate* means an individual rate that produces a revenue/variable cost ratio above the statutory cap level.

(e) *Above-cap rate group* means a rate group specified in § 1145.3(b) that produces an average revenue/variable cost ratio above the statutory cap level. The term may relate either to a railroad industry rate group or to an individual carrier rate group for which a determination is made under § 1145.4(a).

(f) *Rate (or rate group) determined to be above the cap level* means a rate (or rate group) that had or would have an above-cap status as of the effective date of an increase in the rate, under the latest effective determination made by the Commission concerning the status of the rate on that date, whether made in an annual proceeding under § 1145.4 or in another proceeding.

(g) *Below-cap rate (or rate group)* means a rate (or rate group) that produces a revenue/variable cost ratio equal to or below the statutory cap level.

§ 1145.2 Purpose.

These rules establish procedures by which the Interstate Commerce Commission will ensure continued compliance by the Nation's railroads with the statutory cap level on freight rates for recyclable commodities established in 49 U.S.C. 10731(e). The Commission will:

(a) Determine annually the statutory cap level to apply for the ensuring calendar year;

(b) Determine annually the regional and national average revenue/variable cost ratios produced by rates on recyclable commodities and identify the recyclable commodities having territorial average ratios above the statutory cap level;

(c) Determine annually, in respnse to shipper requests, the revenue/variable cost ratios produced by rates on individual movements of recyclable commodities and identify the movements having ratios above the statutory cap level; and

(d) Regulate rate increases on recyclable commodities, including increases under 49 U.S.C. 10707a (a) through (d), to prohibit increases in rates with ratios above the statutory cap level and to prevent increases in other rates from raising the ratios on those rates above the cap level.

§ 1145.3 Annual proceedings: submission of evidence.

(a) *Initial railroad submission.* By September 15 of each year, railroads shall file, jointly or separately, certified average revenue/variable cost ratios as described in paragraph (b) of this section for all single-line, joint, and combination rates applicable to each recyclable commodity. Such ratios will be computed on the basis of the railroads' revenues for each commodity and the railroads' costs for that particular transportation determined pursuant to 49 U.S.C. 10705a(m). The Commission's most recently published one percent waybill study will be an acceptable source for computing the average revenue/variable cost ratios determined under this paragraph subject to correction for overstatement of revenues due to 49 U.S.C. 10713 contracts at the option of participating railroads. The recyclable commodity ratios shall be for the applicable five digit STCC code groups. Parties may petition for reconsideration of the STCC level described in § 1145.1(a) by identifying, with adequate justification, specific exceptions that may be appropriate.

(b) *Regional and national average revenue/variable cost ratios required.* The computations described in paragraph (a) of this section will be made so that for each commodity there will be computed a separate average revenue/variable cost ratio for three regional rate groups and one national rate group as follows:

(1) Intra-East;

(2) Intra-West;

(3) Between East and West; and

(4) Nationally.

The Commission decision under § 1145.4 for each commodity will be based upon the revenue/variable cost ratios computed for the three regional rate groups wherever the car samples used in computing the regional ratios comprise ten or more cars. Wherever the car sample used in computing a regional ratio comprises nine or fewer cars, the national revenue/variable cost ratio for that commodity will be used for that regional rate group instead of the regional ratio.

(c) *Initial railroad submission available to shippers.* By September 15 of each year, the railroads shall make available to shippers, at a convenient time and a place provided by the railroads, the certified average revenue/variable cost ratios described in paragrpah (b) of this section, including the underlying workpapers. The certified average revenue/variable cost ratios submitted by the railroads and the underlying workpapers shall also be made available to shippers during business hours in the Interstate Commerce Commission Building, Public Dockets Room. The underlying workpapers shall be presented to shippers at a level of aggregation sufficient to assure that specific shipper contract or shipment information is not disclosed.

(d) *Shippers to present to appropriate railroads disagreement with certified average revenue/variable cost ratios.* If a shipper disagrees with the certified average revenue/variable cost ratios submitted by the railroads pursuant to paragraph (a) of this section, it shall present its disagreement to the railroads in writing within 7 days of the railroads' filing, or by September 22 of each year, whichever is earliest.

(e) *Railroads and shippers to negotiate changes in submitted certified average revenue/variable cost ratios and submit revised ratios.* Upon receipt of a shipper's written disagreement with any certified average revenue/variable cost ratio submitted by the railroads pursuant to paragraph (a) of this section, the railroads shall negotiate in good faith with the shipper to resolve the disagreement. The railroads and shippers shall submit to the Commission by October 15 any agreed adjustments to the railroads' initial submissions pursuant to paragraph (a) of this section. To the extent that disagreement remains, the railroads and shippers shall, by October 15, submit evidence and argument supporting their respective positions.

(f) *Alternate railroad filing in lieu of filing under paragraph (a).* Any individual railroad or railroad system may satisfy the requirements of paragraph (a) of this section with respect to some or all recyclable commodities by submitting by September 15 the revenue/variable cost ratios produced by single-line or combination rates for movements of the commodities over its line only. A submission under this paragraph shall be made available to shippers pursuant to paragraph (c) of this section and the provisions of paragraphs (d) and (e) of this section shall also apply.

(g) *Individual rates.* A shipper may establish in any annual proceeding that the rate it actually pays for an individual movement of a recyclable commodity exceeds the statutory cap level. Submission of evidence on individual rate issues will be governed by the following schedule:

(1) By September 15 of each year, shippers shall file their statements, if any, on individual rates with the Commission and serve them on the railroads. These shall be sworn statements supported by cost evidence, which may be either adjusted or unadjusted, and evidence of actual revenues paid to railroads for shipments made.

(2) The railroads may respond to the shippers' individual rate statements on or before October 15 by filing sworn statements supported by cost evidence, which may be either adjusted or unadjusted, and evidence of revenues actually collected for shipments transported.

§ 1145.4 Annual proceedings: Commission decision.

(a) *Date and content of decision.* In a decision to be issued annually by December 15, the Commission will state the statutory cap level required by 49 U.S.C. 10731(e), to apply for the ensuing calendar year. The Commission will also state the regional and national average revenue/variable cost ratio levels produced by the rates for each recyclable commodity and determine which, if any, regional and national rate groups produce ratios exceeding the simultaneously announced statutory cap level. These rate group determinations will be made not only in relation to rates for the railroad industry overall but also in relation to the rates of any railroad that has made an acceptable alternative submission under § 1145.3(f). In addition, based on the evidence submitted regarding individual rates, the Commission will state the revenue/variable cost ratios produced by those rates and determine which, if any, of those rates produce ratios exceeding the statutory cap level.

(b) *Contingencies.* (1) If for any reason the Commission experiences delay in issuing the annual decision, the prior annual decision shall remain in effect until the issuance of a new decision. At such time as the new annual decision is issued, its statutory cap level determination shall apply retroactively so as to cover all recyclable commodity movements transported during the calendar year.

(2) If the Commission is unable to make a requested individual rate determination by the date of the annual decision, it will provide in the decision either:

(i) That the determination will be made in a subsequent decision in the same annual proceeding; or

(ii) That the issue will be transferred to a separate proceeding for disposition.

(c) *Limited scope.* No rate reductions or damages will be ordered and no rate increases will be approved in the annual proceedings conducted under this part, which are solely for determination of the statutory cap level, revenue/variable cost ratio levels, and above-cap rates and rate groups.

§ 1145.5 Regulation of rate increases.

(a) *Focus.* The ongoing regulation of maximum reasonableness of rates on recyclable commodities is directed to rate increases, not to rate levels apart from increases.

(b) *Jurisdiction.* The Commission has regulatory jurisdiction over all rate increases on recyclable commodities. No showing of railroad market dominance is required.

(c) *Standard of maximum reasonableness.* The reasonable maximum rate level on a recyclable commodity produces a revenue/variable cost ratio equal to the statutory cap level determined in annual proceedings under this part. A rate increase violates this standard to the extent that it raises a below-cap rate above the cap level, or if it applies to a rate that is already above the cap level.

(d) *Review of increases.* Investigation and complaint proceedings with respect to maximum reasonableness of rate increases on recyclable commodities are conducted under the same procedures as apply to challenges to rates on other commodities, with the exception of the special requirements and procedures identified in paragraph (f) of this section for certain increases.

(e) *Increases subject to special procedures.* The following rate increases are subject to the special requirements and procedures of paragraph (f) of this section:

(1) Increases in rates belonging to rate groups determined to be above the cap level.

(2) Increases in rates determined to be individually above the cap level.

(f) *Special requirements and procedures.* Notwithstanding the provisions of 49 U.S.C. 10707a (a) through (d), every increase covered by paragraph (e) of this section is subject to the following requirements and procedures:

(1) *Notice and challenges.* The increase must be filed on statutory notice and is subject to protest, suspension, investigation, and to challenge by complaint.

(2) *Prejustification.* The tariff filing containing the increase must be accompanied by a sworn statement, supported by unadjusted or adjusted cost evidence, to demonstrate the facts specified in paragraphs (f)(3) and (4) of this section.

(3) *Relationship of existing rate to cap level.* The prejustification must establish one of the following:

(i) The rate group or individual rate that was determined to be above the cap level has fallen to or below the cap level;

(ii) The cap level has risen above the level of the rate; or

(iii) The rate, although belonging to an above-cap group, is not individually above the cap.

(4) *Effect of increase.* The prejustification must also establish the following:

(i) The increase will not raise the rate above the cap level; and

(ii) If the rate is a below-cap rate belonging to an above-cap group, the increase will not raise the group's average ratio farther above the cap level, because either:

(A) The increase is a cost recovery increase that does not raise the revenue/variable cost ratio produced by the rate; or

(B) The increase is offset by decreases in other rates in the same rate group.

(g) *Increases not subject to special procedures.* A rate increase is not subject to the special requirements and procedures of paragraph (f) of this section if all rates to which the increase applies belong to groups determined to be at or below the cap level and none of the rates has been determined to be above the cap level individually. Such an increase is subject to the reasonableness standard set forth in paragraph (c) of this section, but may be challenged and reviewed only by procedures consistent with the provisions of 49 U.S.C. 10707a (a) through (d) and part 1135 of this chapter.

(h) *Remedies.* Rate reductions and damage awards are available, to the extent justified, in all rate investigation and complaint proceedings regarding recyclable commodities. They will be ordered only to remedy unlawful rate increases and will not be premised on rate levels apart from increases.

§ 1145.6 Prospective effect.

The rules established in this part are prospective only. Claims relating to periods prior to adoption of these rules are not affected by the rules.

§ 1145.7 Application of railroad cost recovery procedures.

Nothing in these rules is to be construed so as to preclude the application to recyclable commodities of any valid changes by the Commission in rules and procedures adopted in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures,* that apply to all commodities.

PARTS 1146—1149—[RESERVED]

PARTS 1150–1174—LICENSING PROCEDURES

PARTS 1150–1159—RAIL LICENSING PROCEDURES

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

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1150.35 Procedures and relevant dates—transactions that involve creation of Class I or Class II carriers.

AUTHORITY: 49 U.S.C. 10321, 10901 and 10505; 5 U.S.C. 553 and 559.

SOURCE: 47 FR 8199, Feb. 25, 1982, unless otherwise noted. Redesignated at 47 FR 49581, Nov. 1, 1982.

Subpart A—Applications Under 49 U.S.C. 10901

§ 1150.1 Introduction.

(a) *When an application is required.* This subpart governs applications under 49 U.S.C. 10901 for a certificate of public convenience and necessity authorizing the construction, acquisition or operation of railroad lines. Noncarriers require Commission approval under section 10901 to construct, acquire or operate a rail line in interstate commerce. Existing carriers require approval under section 10901 only to construct a new rail line or operate a line owned by a noncarrier, since acquisition by a carrier of an active rail line owned by a carrier is covered by 49 U.S.C. 11343. We have exempted from these requirements the acquisition by a State entity of a rail line that has been approved for abandonment, as well as operations over these lines. See subpart C of this part. In addition, where appropriate, we have granted individual exemptions from these certification requirements. See 49 U.S.C. 10505.

(b) *Content of the application.* Applications filed under this subpart shall include the information set forth in §§ 1150.2 through 1150.9. The applicant must also comply with the Energy and Environmental Regulations, at 49 CFR parts 1106 and 1105 (including consulting with the Commission's Energy and Environmental Branch at least 6 months prior to filing an application, to begin the scoping process to identify environmental issues and outline procedures for analysis of this aspect of the proposal).

§ 1150.2 Overview.

(a) A brief narrative description of the proposal.

(b) The full name and address of applicant(s).

§ 1150.3 Information about applicant(s).

(a) The name, address, and phone number of the representative to receive correspondence concerning this application.

(b) Facts showing that applicant is either a common carrier by railroad or has been organized to implement the proposal for which approval is being sought.

(c) A statement indicating whether the rail line will be operated by applicant. If not, the operator which has been selected must join in the application, and provide all information required for an applicant. If the operator has not yet been selected, state who is being considered.

(d) A statement indicating whether applicant is affiliated by stock ownership or othewise with any industry to be served by the line. If so, provide details about the nature and extent of the affiliation.

(e) Date and place of organization, applicable State statutes, and a brief description of the nature and objectives of the organization.

(f) If a corporation, submit:

(1) A list of officers, directors, and 10 principal stockholders of the corporation and their respective holdings. A statement whether any of these officers, directors or major shareholders control other regulated carriers. Also a list of entities, corporation(s) individual(s), or group(s) who control applicant, the extent of control, and whether any of them control other common carriers.

(2) As exhibit A, any resolution of the stockholders or directors authorizing the proposal.

(g) If a partnership or individual, submit the name and address of all general partners and their respective interests, and whether any of them control other carriers.

(h) If applicant is an entity other than as described in paragraphs (e) or (f) of this section, submit name, title, and business address of principals or trustee, and whether the entity controls any other common carriers.

(i) If applicant is a trustee, receiver, assignee, or a personal representative of the real party in interest, details about the appointment (including supporting documents, such as the court order authorizing the appointment and the filing) and about the real party in interest.

(j) If applicant is an existing carrier, it may satisfy the informational requirements of paragraphs (f) through (i) of this section by making appropriate reference to the docket number of prior applications that have been filed within the previous three years in which the information has been submitted.

§ 1150.4 Information about the proposal.

(a) A description of the proposal and the significant terms and conditions, including consideration to be paid (monetary or otherwise). As exhibit B, copies of all relevant agreements.

(b) Details about the amount of traffic and a general description of commodities.

(c) The purposes of the proposal and an explanation of why the public convenience and necessity require or permit the proposal.

(d) As exhibit C, a map which clearly delineates the area to be served including origins, termini and stations, and cities, counties and States. The map should also delineate principal highways, rail routes and any possible interchange points with other railroads. If alternative routes are proposed for construction, the map should clearly indicate each route.

(e) A list of the counties and cities to be served under the proposal, and whether there is other rail service available to them. The names of the railroads with which the line would connect, and the proposed connecting points; the volume of traffic estimated to be interchanged; and a description of the principal terms of agreements with carriers covering operation, interchange of traffic, division of rates or trackage rights.

(f) The time schedule for consummation or completion of the proposal.

(g) If a new line is proposed for construction:

(1) The approximate area to be served by the line.

(2) The nature or type of existing and prospective industries (e.g., agriculture, manufacturing, mining, warehousing, forestry) in the area, with general information about the age, size, growth potential and projected rail use of these industries.

(3) Whether the construction will cross another rail line and the name of the railroad(s) owning the line(s) to be crossed. If the crossing will be accomplished with the permission of the railroad(s), include supporting agreements. If a Commission determination under 49 U.S.C. 10901(d)(1) will be sought, include such requests.

§ 1150.5 Operational data.

As exhibit D, an operating plan, including traffic projection studies; a schedule of the operations; information about the crews to be used and where employees will be obtained; the rolling stock requirements and where it will be obtained; information about the operating experience and record of the proposed operator unless it is an operating railroad; any significant change in patterns of service; any associated discontinuance or abandonments; and expected operating economies.

§ 1150.6 Financial information.

(a) The manner in which applicant proposes to finance construction or acquisition, the kind and amount of securities to be issued, the approximate terms of their sale and total fixed charges, the extent to which funds for financing are now available, and whether any of the securities issued would be underwritten by industries to be served by the proposed line. Explain how the fixed charges will be met.

(b) As exhibit E a recent balance sheet. As exhibit F, an income statement for the latest available calendar year prior to filing the application.

(c) A present value determination of the full costs of the proposal. If construction is proposed, the costs for each year of such construction (in a short narrative or by chart).

(d) A statement of projected net income for 2 years, based upon traffic projections. Where construction is contemplated, the statement should represent the 2 years following completion of construction.

§ 1150.7 Environmental and energy data.

As exhibit H, information and data prepared under 49 CFR Part 1105, and the "Revision of the Nat'l. Guidelines Environmental Policy Act of 1969," 363 I.C.C. 653 (1980), and in accordance with "Implementation of the Energy Policy and Conservation Act of 1975," 49 CFR Part 1106.

§ 1150.8 Additional support.

Any additional facts or reasons to show that the public convenience and necessity require or permit approval of this application. The Commission may require additional information to be filed where appropriate.

§ 1150.9 Notice.

A summary of the proposal which will be used to provide notice under § 1150.10(f).

§ 1150.10 Procedures.

(a) *Waivers.* Prior to filing an application, prospective applicants may seek an advance waiver, either on a permanent or temporary basis, of required information which is unavailable or not necessary or useful in analysis of the proposal. However, if the information is clearly not applicable to the individual proposal, a waiver is not necessary and need not be sought. A petition must specify the sections for which waiver or clarification is sought and the reasons why it should be granted. No replies will be permitted. Parties may, upon an appropriate showing, demonstrate their need to examine data which have previously been waived. In such circumstances, the Commission only requires that it be produced under § 1150.8 above.

(b) *Filing procedures.* The original and 10 copies of the application and all documents shall be filed with the Secretary. A filing fee in the amount set forth in 49 CFR 1002.2(f)(33) is required to file an application. Copies of documents shall be furnished promptly to interested parties upon request. The application shall include a stamped self-addressed envelope to be used to notify applicant of the docket number. Additionally, if possible, telephonic communication of the docket number shall be made.

(c) *Signatures.* The original of the application shall be signed by applicants (if a partnership, all general partners must sign; and if a corporation, association, or other similar form of organization, the signature should be that of the executive officer having knowledge of the matters and designated for that purpose). Applications shall be made under oath and shall contain an appropriate certification (if a corporation, by its secretary) showing that the affiant is duly authorized to verify and file the application. Any persons controlling an applicant shall also sign the application.

(d) *Related applications.* Applicant shall file concurrently all directly related applications (e.g., to issue securities, control motor carriers, obtain access to terminal operations, acquire trackage rights). All such applications will be considered with the main application.

(e) *Service.* As soon as the docket number is obtained the applicant shall serve a conformed copy of the application by first-class mail upon the Governor (or Executive Officer), Public Service Commission, and Department of Transportation of each State in which any part of the properties involved in the proposed transaction is located. Within 2 weeks of filing, applicant shall submit to the Commission a copy of the certificate of service indicating that all persons so designated have been served a copy of the application.

(f) *Publication.* Within 2 weeks of filing, applicant shall have published the summary of the application (prepared under § 1150.9) in a newspaper of general circulation in each county in which the line is located. The notice should inform interested parties of the date by which they must advise the Commission of their interest in the proceeding. This date shall be calculated as the 35th day after the filing of the application which is neither a Saturday, Sunday, or legal holiday in the District of Columbia. Applicant must file an affidavit of publication immediately after the publication has been completed. The Commission will, as soon as practicable, either publish the notice summary in the FEDERAL REGISTER or reject the application if it is incomplete.

(g) *Public participation.* Written comments (with 10 copies) must be filed within 35 days of the filing of the application. Comments must contain the basis for the party's position either in support or opposition. Applicant must be served with a copy of each comment. On the basis of the comments and the assessment by the Energy and Environmental Branch, the Commission will decide if a hearing is necessary. A hearing may be either oral or through receipt of written statements (modified procedure). (See 49 CFR 1112.1 *et seq.*) If there is no opposition to the application, additional evidence normally need not be filed, and a decision will be reached using the information in the application.

(h) *Replies to written comments.* Applicant's replies will be considered by the Commission provided they are filed and served within 5 days of the due date of the pleadings they address.

[47 FR 8199, Feb. 25, 1982. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 52 FR 46483, Dec. 8, 1987; 53 FR 19302, May 27, 1988]

Subpart B—Designated Operators

§ 1150.11 Introduction.

A certificate of designated operator will be issued to an operator providing service pursuant to a rail service continuation agreement under section 304 of the Regional Rail Reorganization Act of 1973, as amended by the Railroad Revitalization and Regulatory Reform Act of 1976. The designated operator (D-OP) may commence and terminate the service in accordance with the terms of the agreement. When service is terminated the D-OP must notify all shippers on the line. To obtain a D-OP certificate, the information in this subpart must be filed with the Commission. A copy of the certificate of designated operator shall be served on the Association of American Railroads.

§ 1150.12 Information about the designated operator.

(a) The name and address of the D-OP.

(b) If a new corporation or other new business entity, a copy of the certificate of incorporation or, if unincorporated, the facts and official organizational documents relating to the business entity.

(c) The names and addresses of all officers and directors, with a statement from each which indicates present affiliation, if any, with a railroad.

(d) Sufficient information to establish its financial responsibility for the proposed undertaking, unless the D-OP is a common carrier by railroad. The nature and extent of all liability insurance coverage, including insurance binder or policy number, and name of insurer.

§ 1150.13 Relevant dates.

The exact dates of the period of operation which have been agreed upon by the D-OP, the offeror of the rail service continuation payment, and the owner of the line to be operated, in their lease and operating agreements.

§ 1150.14 Proposed service.

(a) A copy of all agreements between the D-OP, the offeror of the rail service continuation payment, and the owner of the line to be operated.

(b) Any additional information which is necessary to provide the Commission with a description of:

(1) The line over which service is to be provided (e.g., U.S.R.A. Line); and

(2) All interline connections, including the names of the connecting railroads.

§ 1150.15 Information about offeror.

(a) The name and address of the offeror of the rail service continuation payment.

(b) Sufficient information to establish the financial responsibility of the offeror for the proposed undertaking, or if the offeror is a State or municipal corporation or authority, a statement that it has authority to perform the service or enter into the agreement for subsidy.

§ 1150.16 Procedures.

Upon receipt of this information, the matter will be docketed by the prefix initials "D-OP." Operators may begin operating immediately upon the filing of the necessary information (plus three copies). Although the designated operator will not be required to seek and obtain authority from the Commission either to commence or to terminate operations, the designated operator is a common carrier by railroad subject to all other applicable provisions of 49 U.S.C. Subtitle IV. However, we have exempted designated operators from some aspects of regulation. See "Exempting of Certain Designated Operators from section 11343, 361 ICC 379 (1979), as modified by No. 79-2457, John W. McGinness, Brotherhood of Locomotive Engineers and Railway Labor Executives' Association v. Interstate Commerce Commission and United States of America." (U.S.C.A. D.C. Cir., decided August 17, 1981).

Subpart C—Modified Certificate of Public Convenience and Necessity

§ 1150.21 Scope of rules.

These special rules apply to operations over abandoned rail lines, which have been acquired (through purchase or lease) by a State. The rail line must have fully abandoned, or approved for abandonment by the Commission or a bankruptcy court. As used in these rules, the term "State" includes States, political subdivisions of States, and all instrumentalities through which the State can act. An operator has the option of applying for a modified certificate of public convenience and necessity under this subpart or a common carrier certificate under Subpart A of this part. A copy of the modified certificate shall be served on the Association of American Railroads.

§ 1150.22 Exemptions and common carrier status.

The acquisition by a State of a fully abandoned line is not subject to the jurisdiction of the Interstate Commerce Commission. The acquisition by a State of a line approved for abandonment and not yet fully abandoned is exempted from the Commission's jurisdiction. If the State intends to operate the line itself, it will be considered a common carrier. However, when a State acquires a rail line described under § 1150.21 and contracts with an operator to provide service over the line, only the operator incurs a common carrier obligation. The operators of these lines are exempted from 49 U.S.C. 10901 and 10903 which are the statutory requirements governing the start up and termination of operations. Operators exempted from these requirements must comply with the requirements of this part and must apply for a modified certificate of public convenience and necessity. The operator is a common carrier and incurs all benefits and responsibilities under 49 U.S.C. subtitle IV; however, the State through its operational agreement or the operator of the line may determine certain preconditions, such as payment of a subsidy, which must be met by shippers to obtain service over the line. The operator must notify the shippers on the line of any preconditions. The modified certificate will authorize service to shippers who meet these preconditions and the operator will be required to provide complete common carrier service under this certificate only to those shippers. (See 363 ICC 132.)

§ 1150.23 Modified certificate of public convenience and necessity.

(a) The operator must file a notice with the Commission for a modified certificate of public convenience and necessity. Operations may commence immediately upon the filing; however, the Commission will review the information filed, and if complete, will issue a modified certificate notice.

(b) A notice for a modified certificate of public convenience and necessity shall include the following information:

(1) The name and address of the operator and, unless the operator is an existing rail carrier:

(i) Its articles of incorporation or, if it is unincorporated, the facts and organizational documents relating to its formation;

(ii) The names and addresses of all of its officers and directors and a statement indicating any present affiliation each may have with a rail carrier; and

(iii) Sufficient information to establish the financial responsibility of the operator.

(2) Information about the prior abandonment, including docket number, status and date of the first decision approving the abandonment.

(3) The exact dates of the period of operation which have been agreed upon by the operator and the State which owns the line (if there is any agreement, it should be provided);

(4) A description of the service to be performed including, where applicable, a description of:

(i) The line over which service is to be performed;

(ii) All interline connections including the names of the connecting railroads;

(iii) The nature and extent of all liability insurance coverage, including binder or policy number and name of insurer; and

(iv) Any preconditions which shippers must meet to receive service.

(5) The name and address of any subsidizers, and

(6) Sufficient information to establish the financial responsibility of any subsidizers (if the subsidizer is a State, the information should show that it has authority to enter into the agreement for subsidized operations).

(c) The service offered and the applicable rates, charges, and conditions must be described in tariffs published by the operator to the Commission's rules.

§ 1150.24 Termination of service.

The duration of the service may be determined in the contract between the State and the operator. An operator may not terminate service over a line unless it first provides 60 days' notice of its intent to terminate the service. The notice of intent must be:

(a) Filed with the State and the Commission, and

(b) Mailed to all persons that have used the line within the 6 months preceding the date of the notice.

Subpart D—Exempt Transactions

SOURCE: 51 FR 2504, Jan. 17, 1986, unless otherwise noted.

§ 1150.31 Scope of exemption.

(a) Except as indicated below, this exemption applies to all acquisitions and operations under section 10901 (*See* 1150.1, *supra*). This exemption also includes:

(1) Acquisition by a noncarrier of rail property that would be operated by a third party;

(2) Operation by a new carrier of rail property acquired by a third party;

(3) A change in operators on the line; and

(4) Acquisition of incidental trackage rights. Incidental trackage rights include the grant of trackage rights by the seller, or the assignment of trackage rights to operate over the line of a third party that occur at the time of the exempt acquisition or operation. This exemption does not apply when a class I railroad abandons a line and another class I railroad then acquires the line in a proposal that would result in a major market extension as defined at § 1180.3(c).

(b) Other exemptions that may be relevant to a proposal under this subpart are the exemption for control at § 1180.2(d)(1) and (2), and the from securities regulation at 49 CFR part 1175.

§ 1150.32 Procedures and relevant dates—transactions that involve creation of Class III carriers.

(a) To qualify for this exemption, applicant must file a verified notice providing details about the transaction, and a brief caption summary, conforming to the format in § 1150.34, for publication in the FEDERAL REGISTER.

(b) The exemption will be effective 7 days after the notice is filed. The Commission, through the Director of the Office of Proceedings, will publish a notice in the FEDERAL REGISTER within 30 days of the filing. A change in operators would follow the provisions at § 1150.34, and notice must be given to shippers.

(c) If the notice contains false or misleading information, the exemption is void *ab initio*. A petition to revoke under 49 U.S.C. 10505(d) does not automatically stay the exemption.

(d) Applicant must preserve intact all sites and structures more than 50 years old until compliance with the requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470 is achieved.

[51 FR 2504, Jan. 17, 1986, as amended at 53 FR 4626, Feb. 17, 1988; 53 FR 5982, Feb. 29, 1988]

§ 1150.33 Information to be contained in notice—transactions that involve creation of Class III carriers.

(a) The full name and address of the applicant;

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;

(c) A statement that an agreement has been reached or details about when an agreement will be reached;

(d) The operator of the property;

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject property,

(2) The proposed time schedule for consummation of the transaction,

(3) The mile-posts of the subject property, including any branch lines, and

(4) The total route miles being acquired;

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States; and

(g) A certificate that applicant has complied with the notice requirements of 49 CFR 1105.11 and has provided the appropriate State Historic Preservation Officer with the identification (including maps, photographs, and descriptions) of sites and structures listed in the *National Register*, and 50 years old and older, that will be transferred as a result of the exempt transaction.

(h) A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier.

[51 FR 2504, Jan. 17, 1986, as amended at 51 FR 25207, July 11, 1986; 53 FR 4626, Feb. 17, 1988; 53 FR 5982, Feb. 29, 1988]

§ 1150.34 Caption summary—transactions that involve creation of Class III carriers.

The caption summary must be in the following form. The information symbolized by numbers is identified in the key below:

Interstate Commerce Commission

Notice of Exemption

Finance Docket No.

(1)—Exemption (2)-(3)

(1) Has filed a notice of exemption to (2) (3)'s line between (4). Comments must be filed with the Commission and served on (5). (6).

Key to symbols:

(1) Name of entity acquiring or operating the line, or both.

(2) The type of transaction, *e.g.*, to acquire, operate, or both.

(3) The transferor.

(4) Describe the line.

(5) Petitioners representative, address, and telephone number.

(6) Cross reference to other class exemptions being used.

The notice is filed under § 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[47 FR 8199, Feb. 25, 1982. Redesignated at 47 FR 49581, Nov. 1, 1982. Amended at 53 FR 5982, Feb. 29, 1988]

§ 1150.35 Procedures and relevant dates—transactions that involve creation of Class I or Class II carriers.

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Commission.

(b) The notice of intent must contain all the information required in § 1150.33 plus:

(1) A general statement of service intentions; and

(2) A general statement of labor impacts.

(c) The notice of intent must be served on:

(1) The Governor of each State in which track is to be sold;

(2) The State(s) Department of Transportation or equivalent agency;

(3) The national offices of the labor unions with employees on the affected line(s); and

(4) Shippers representing at least 50 percent of the volume of local traffic and traffic originating or terminating on the line(s) in the most recent 12 months for which data is available (beginning with the largest shipper and working down).

(d) Applicant must also file a verified notice of exemption conforming to the requirements of (b) above and of § 1150.34, and certify compliance with § 1150.35 (a), (b), and (c), attaching a copy of the notice of intent.

(e) The exemption will be effective 21 days after the notice is filed. The Commission, through the Director of the Office of Proceedings, will publish a notice in the FEDERAL REGISTER within 30 days of the filing.

(f) If the notice contains false or misleading information, the exemption is void *ab initio*. A petition to revoke under 49 U.S.C. 10505(d) does not automatically stay the transaction. Stay petitions must be filed within 7 days of the filing of the notice of exemption. Replies will be due 7 days thereafter. To be considered, stay petitions must be timely served on the applicant.

(g) Applicant must comply with § 1150.33(g) regarding section 106 of the National Historic Preservation Act, 16 U.S.C. 470.

[53 FR 5982, Feb. 29, 1988, as amended at 53 FR 31341, Aug. 18, 1988] Part 1151

PART 1151—FEEDER RAILROAD DEVELOPMENT PROGRAM

Sec.

1151.1 Scope.
1151.2 Procedures.
1151.3 Contents of application.
1151.4 Commission determination.
1151.5 Verification and copies.

AUTHORITY: 5 U.S.C. 553, 49 U.S.C. 10910.

SOURCE: 48 FR 9654, Mar. 8, 1983, unless otherwise noted.

§ 1151.1 Scope.

This part governs applications filed under 49 U.S.C. 10910. The Commission can require the sale of a rail line to a financially responsible person. A rail line is eligible for a forced sale if it appears in category 1 or 2 of the owning railroad's system diagram map (but the railroad has not filed an application to abandon the line), or the public convenience and necessity, as defined in 49 U.S.C. 10910(c)(1), permit or require the sale of the line. Until October 1, 1983, section 10910 is only applicable to lines that carried less than 3 million gross ton-miles of traffic per mile in the preceding calendar year.

§ 1151.2 Procedures.

(a) Before an application is filed, the applicant must obtain a docket number from the Office of the Secretary, Public Records Section, Rate/Finance Unit, Room B-207.

(b) The application proceeding commences on the filing of the application with the Commission.

(c) Within 15 days of the receipt of the application, the Commission shall issue a decision rejecting the initial application if the Commission determines that the application does not substantially conform to these regulations regarding form and content.

(d) Within 30 days of the receipt of the initial application, other interested parties may file competing applications seeking to acquire all or any portion of the line sought in the initial application.

(e) At any time during the pendency of the proceeding, the Commission may issue a decision rejecting a competing application if the Commission determines that the competing application does not substantially conform to these regulations regarding form and substance.

(f) Within 60 days of the filing of the initial application, the owning railroad and other interested parties shall file their verified statements addressing the applications.

(g) Within 80 days of the filing of the initial application, applicants may file a verified reply.

(h) Within 140 days of the filing of the initial application, the Commission decision disposing of all issues shall be issued. If the Commission finds that the public convenience and necessity require or permit sale of a line, the Commission shall concurrently publish this finding in the FEDERAL REGISTER.

(i) Within 10 days of the service date of the decision ordering the sale, the applicant(s) must file a notice with the Commission and serve a copy on the owning railroad accepting or rejecting the Commission's determination.

(j) If two or more applicants timely file notices accepting the Commission's determination, the owning railroad shall select the applicant with whom it wishes to transact business. Within 15 days of the service date of the Commission decision, the owning railroad shall file this notice with the Commission and serve a copy on the applicants.

[48 FR 9654, Mar. 8, 1983, as amended at 48 FR 34475, July 29, 1983]

§ 1151.3 Contents of application.

(a) The initial application and all competing applications must include:

(1) Identification of the line to be purchased including:

(i) The name of the owning carrier; and

(ii) The exact location of the line to be purchased including milepost designations, origin and termination points, stations located on the line, and cities, counties and States traversed by the line.

(2) Identification of applicant including:

(i) The applicant's name and address;

(ii) The name, address, and phone number of the representative to receive correspondence concerning this application;

(iii) A description of applicant's affiliation with any railroad; and

(iv) If the applicant is a corporation, the names and addresses of its officers and directors.

(3) Information sufficient to demonstrate that the applicant is a financially responsible person. In this regard, the applicant must demonstrate its ability:

(i) To pay the higher of the net liquidation value (NLV) or going concern value (GVC) of the line; and

(ii) To cover expenses associated with providing services over the line (including, but not limited to, operating costs, rents, and taxes) for at least the first 3 years after acquisition of the line.

(4) An estimate of the NLV and the GCV of the line and evidence in support of these estimates.

(5) An offer to purchase the line at the higher of the two estimates submitted pursuant to paragraph (a)(4) of this section.

(6) The dates for the proposed period of operation of the line covered by the application.

(7) An operating plan that identifies the proposed operator; attaches any contract that the applicant may have with the proposed operator; describes in detail the service that is to be provided over the line, including all interline connections; and demonstrates that adequate transportation will be provided over the line for at least 3 years from the date of acquisition.

(8) A description of the liability insurance coverage carried by applicant or any proposed operator. If trackage rights are requested, the insurance must be at a level sufficient to indemnify the owning railroad against all personal and property damage that may result from negligence on the part of the operator in exercising the trackage rights.

(9) Any preconditions (such as assuming a share of any subsidy payments) that will be placed on shippers in order for them to receive service, and a statement that if the application is approved, no further preconditions will be placed on shippers without Commission approval. (This Statement Will Be Binding Upon Applicant if the Application is Approved.)

(10) The name and address of any person(s) who will subsidize the operation of the line.

(11) A statement that the applicant will seek a finding by the Commission that the public convenience and necessity permit or require acquisition, or a

statement that the line is currently in category 1 or 2 of the owning railroad's system diagram map.

(i) If the applicant seeks a finding of public convenience and necessity, the application must contain detailed evidence that permits the Commission to find that:

(A) The rail carrier operating the line refused within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over the line;

(B) The tranportation over the line is inadequate for the majority of shippers who transport traffic over the line;

(C) The sale of the line will not have a significantly adverse financial effect on the rail carrier operating the line;

(D) The sale of the line will not have an adverse effect on the overall operational performance of the rail carrier operating the line; and

(E) The sale of the line will be likely to result in improved railroad transportation for shippers who transport traffic over the line.

(ii) If the applicant seeks a finding that the line is currently in category 1 or 2 of the owning carrier's system diagram map, the relevant portion of the current map must be attached to the application.

(12) A statement detailing applicant's election of exemption from the provisions of Title 49, United States Code, and a statement that if the application is approved, no further exemptions will be elected. (This Statement Will Be Binding Upon the Applicant if the Application is Approved.)

(13) A description of any trackage rights sought over the owning railroad that are required to allow reasonable interchange or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the applicant, and an estimate of the reasonable compensation for such rights, including full explanation of how the estimate was reached. The description of the trackage rights shall include the following information: Milepost or other identification for each segment of track; the need for the trackage rights (interchange of traffic, movement of equipment, etc.); frequency of operations; times of operation; any alternative to the use of trackage rights; and any other pertinent data. Trackage rights that are necessary for the interchange of traffic shall be limited to the closest point to the junction with the owning railroad's line that allows the efficient interchange of traffic. A statement shall be included that the applicant agrees to have its train and crew personnel take the operating rules examination of the railroad over which the operating rights are exercised.

(14) A description of any joint rate and division agreement that must be established. The description(s) shall include the following information: The railroad(s) involved; the estimated revenues that will result from the division(s); the total costs of operating the line segment purchased (including the trackage rights fees); and any other pertinent data.

NOTE: This information is required only if the applicant requests that the Commission prescribe joint rates and division in the feeder line proceeding.

(15) The extent to which the owning railroad's employees who normally service the line will be used.

(16) If the application is filed before October 1, 1983, informaton sufficient to allow the Commission to determine that the line sought to be acquired carried less than 3 million gross ton-miles of traffic per mile in the preceding calendar year. Gross ton-miles are calculated by adding the ton-miles of the cargo and the ton-miles related to the tare (empty) weight of the freight cars used to transport the cargo in the loaded movement. In calculating the gross ton-miles, only those related to the portion of the segment purchased shall be included.

(17) An affidavit stating that the service requirements on § 1151.3(b) have been met.

(b) Concurrently with the filing of the application, applicant shall serve a copy of the application by certified mail on the following parties: The owning railroad; all rail patrons who originated and/or received traffic on the line during the 12-month period preceding the month in which the application is filed; the Designated State Agency in the State(s) in which the property is located; county governments in which the line is located; and the headquarters of the Railway Labor Executives' Association.

(c) Applicant shall make copies of the application available to interested parties upon request.

§ 1151.4 Commission determination.

(a) The Commission shall determine whether each applicant is a financially responsible person. To be a financially responsible person, the Commission must find that:

(1) The applicant is capable of paying the constitutional minimum value of the line and able to assure that adequate transportation will be provided over the line for at least 3 years;

(2) The applicant is not a class I or class II railroad or an entity affiliated with a class I or class II railroad.

(b) If the Commission finds that one or more applicants are financially responsible parties, it shall determine whether the involved line or line segment is a qualified line. A line is a qualified line if:

(1) Either

(i) The public convenience and necessity require or permit the sale of line or line segment; or

(ii) The line or line segment is classified in category 1 or 2 of the owning carrier's system diagram map; and

(2) The traffic level on the line or line segment sought to be acquired was less than 3 million gross ton-miles of traffic per mile in the preceding calendar year (Note: This finding will not be required for applications filed after October 1, 1983).

(c) If the Commission finds that one or more financially responsible parties have offered to buy a qualifying line of railroad, the Commission shall set the acquisition cost of the line at the higher of NLV or GCV, order the owning carrier to sell the rail line to one of the financially responsible applicants, and resolve any related issues raised in the application. If an applicant and the owning railroad agree on an acquisition price, that price shall be the final price.

(d) If trackage rights are sought in the application, the Commission shall, based on the evidence of record, set the adequate compensation for such rights, if the parties have not agreed.

(e) If the applicant requests the Commission to set joint rates or divisions and the line carried less than 3 million gross ton-miles of traffic per mile during the preceding calendar year, the Commission shall, pursuant to 49 U.S.C. 10705(a), establish joint rates and divisions based on the evidence of record in the proceeding. Unless specifically requested to do so by the selling carrier, the Commission will not set the rate for the selling railroad's share of the joint rate at less than the applicable level (for the year in which the acquisition is made) set by 49 U.S.C. 10709(d)(2), which limits Commission maximum ratemaking jurisdiction to rates above certain cost/price ratios.

§ 1151.5 Verification and copies.

(a) All pleadings permitted by these regulations must be verified.

(b) An original and 10 copies of an application, verified statement, comment or any other pleading permitted by these rules should be submitted to the Secretary, Interstate Commerce Commission, Washington, DC 20423. The outside envelope and the first page of any document submitted under these rules should be clearly marked "Feeder Line Development."

[48 FR 9654, Mar. 8, 1983, as amended at 48 FR 34475, July 29, 1983]

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

Subpart A—General

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Subpart C—Procedures Governing Notice, Applications, Financial Assistance, and Acquisition for Public Use

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Subpart F—Exempt Abandonments and Discontinuances of Service and Trackage Rights

1152.50 Exempt abandonments and discontinuances of service and trackage rights.

APPENDIX

AUTHORITY: 5 U.S.C. 553, 559, and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d), and 1248; and 49 U.S.C. 10321, 10362, 10505, 10903, 10904, 10905, 10906, 11161, and 11163.

SOURCE: 41 FR 48520, Nov. 4, 1976, unless otherwise noted. Redesignated at 47 FR 49581, Nov. 1, 1982.

Subpart A—General

§ 1152.1 Purpose and scope.

(a) 49 U.S.C. 10903 *et seq.* governs abandonment of rail lines and discontinuance of rail service by common carriers. Section 10903(a) provides that no line of railroad may be abandoned and no rail service discontinued unless the Commission has issued a certificate of public convenience and necessity authorizing the abandonment or discontinuance.

(b) Part 1152 contains regulations governing abandonment and discontinuance of service over rail lines. This part also sets forth procedures for providing financial assistance to assure continued rail freight service and for acquisition of rail lines for alternate public use.

[48 FR 54236, Dec. 1, 1983]

§ 1152.2 Definitions.

Unless otherwise required by the context, the following definitions apply in this part:

(a) "Account" means an account in the Commission's Uniform System of Accounts for Railroad Companies (49 CFR part 1201).

(b) "Act" means the Interstate Commerce Act (49 U.S.C. 10101 et seq.) as amended.

(c) "Base Year" means the latest 12-month period, ending no earlier than 6 months prior to the filing of the abandonment or discontinuance application, for which data has been collected at the branch level as prescribed in § 1152.30(b).

(d) "Branch" means a segment of line for which an application for a certificate of abandonment or discontinuance, pursuant to 49 U.S.C. 10903, has been filed.

(e) "Carrier" means a railroad company or the trustee or trustees of a railroad company subject to regulation under 49 U.S.C., Subtitle IV, chapter 105.

(f) "Commission" means the Interstate Commerce Commission.

(g) "Designated state agency" means the instrumentality created by a State or designated by appropriate authority to administer or coordinate its state rail plan as required by 49 U.S.C. 1654(5)(j)(2), or regulations promulgated pursuant thereto.

(h) "Forecast Year" means the 12-month period, beginning with the first day of the month in which the application is filed with the Commission, for which future revenues and costs are estimated.

(i) "Form R-1" means the railroad's annual report filed with the Commission in accordance with the requirements of 49 U.S.C. 11145.

(j) "Offeror" means a shipper, a State, the United States, a local or regional transportation authority, or any financially responsible person offering rail service continuation assistance under 49 U.S.C. 10905.

(k) "Office" means the section of Rail Services Planning established by Section 205 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 715) as amended.

(l) "Rail Act" means the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210 (90 Stat. 31).

(m) "Rail Form A" means the Commission's Formula for Use in Determining Rail Freight Service Costs, Statement 1F1-73.

(n) "Significant user" means (1) each of the 10 rail patrons which originated and/or received the largest number of carloads (or each patron if there are less than 10), and (2) any other rail patron which originated and/or received 50 or more carloads, on the line proposed for abandonment or discontinuance, during the 12-month period preceding the month in which notice is given of the abandonment or discontinuance application.

(o) "Subsidy year" means any twelve-month period for which a subsidy agreement has been negotiated and is in operation.

(p) "GMA" means the General Managers Association of Chicago.

[41 FR 48520, Nov. 4, 1976, as amended at 43 FR 7624, Feb. 24, 1978; 45 FR 18008, Mar. 20, 1980. Redesignated and amended at 47 FR 49581, Nov. 1982; 48 FR 44828, Sept. 30, 1983; 48 FR 54236, Dec. 1, 1983; 53 FR 49667, Dec. 9, 1988]

Subpart B—System Diagram

§ 1152.10 System diagram map.

(a) Each carrier shall prepare a diagram of its rail system on a map, designating all lines in its system by the categories established in paragraph (b) of this section.

(b) All lines in each carrier's rail system shall be separated into the following categories:

(1) All lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within the 3-year period following the date upon which the diagram, or any amended diagram, is filed with the Commission;

(2) All lines or portions of lines potentially subject to abandonment are those which the carrier has under study and believes may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues.

(3) All lines or portions of lines for which an abandonment or discontinuance application is pending before the Commission on the date upon which the diagram, or any amended diagram, is filed with the Commission;

(4) All lines or portions of lines which are being operated under the rail service continuation provisions of 49 U.S.C. 10905 or of section 304(c)(2) of the Regional Rail Reorganization Act of 1973, as amended, on the date upon which the diagram, or any amended diagram, is filed with the Commission; and

(5) All other lines or portions of lines which the carrier owns and operates, directly or indirectly.

(c) The system diagram map shall be color-coded to show the 5 categories of lines as follows:

(1) Red shall designate those lines described in § 1152.10(b)(1);

(2) Green shall designate those lines described in § 1152.10(b)(2);

(3) Yellow shall designate those lines described in § 1152.10(b)(3);

(4) Brown shall designate those lines described in § 1152.10(b)(4); and

(5) Black or dark blue shall designate those lines described in § 1152.10(b)(5).

(d) The system diagram map shall also identify, and shall be drawn to a scale sufficient to depict clearly, the location of:

(1) All State boundary lines;

(2) Boundaries of every county in which is situated a rail line owned or operated by the carrier which is listed in categories 1 thru 4 (§ 1152.10(b) (1) thru (4)).

(3) Every Standard Metropolitan Statistical Area (SMSA) any portion of which is located within 5 air miles of a rail line owned or operated by the carrier; and

(4) Every city outside an SMSA which has a population of 5,000 or more persons (according to the latest published United States census reports) and of which any portion is located within 5 air miles of a rail line owned or operated by the carrier. A series of interrelated maps may be utilized where the system serves a very large or congested area. An explanation of the interrelationship must be furnished.

[41 FR 48520, Nov. 4, 1976, as amended at 42 FR 25327, May 17, 1977; 43 FR 30557, July 17, 1978. Redesignated and amended at 47 FR 49581, Nov. 1, 1982; 48 FR 54236, Dec. 1, 1983]

§ 1152.11 Description of lines to accompany the system diagram map.

Each carrier shall list and describe, separately by category and within each category by State, all lines or portions of lines identified on its system diagram map as falling within categories 1 thru 3 (§ 1152.10(b) (1) thru (3)) as follows:

(a) Carrier's designation for each line (for example, the Zanesville Secondary Track);

(b) State or States in which each line is located;

(c) County or counties in which each line is located;

(d) Mileposts delineating each line or portion of line; and

(e) Agency or terminal stations located on each line or portion of line with milepost designations.

§ 1152.12 Filing and publication.

(a) Each carrier shall file with the Commission six copies of its color-coded system diagram map (identified by its "AB number" as set forth in the appendix to this part) and the accompanying line descriptions. If a revised map is filed, the line descriptions for the lines which were revised must be filed.

(b) The color-coded system diagram map, any amendments of the map, and accompanying line descriptions shall be served upon the Governor, the public service commission (or equivalent agency) and the designated State agency of each State within which the carrier operates or owns a line of railroad.

(c) *The carrier shall*—(1) Publish in a newspaper of general circulation in each county containing category 1 through 3 lines or lines being revised, a notice containing: (i) A black-and-white copy of the system diagram map (or a portion of map clearly depicting its lines in that county); and (ii) a description of each line;

(2) Post a copy of the newspaper notice: (i) In each agency station or terminal on each line in categories 1 through 3 and on each line which has been revised; or (ii) if there is no agency station on the line, at any station through which business for the line is received or forwarded;

(3) Furnish, at reasonable cost, upon request of any interested person, a copy of its system diagram map (either color-coded or black-and-white); and

(4) Notify interested persons of this availability through its publication in the appropriate county newspaper.

(d) Each carrier shall file with the Commission an affidavit of service and publication stating the date each was accomplished. A copy of each newspaper notice published shall be attached to the affidavit. The effective date of the filing of the initial system diagram map and each amended system diagram map as required in paragraph (a) of this section shall be deemed to be the date upon which the Commission receives the affidavit required in this paragraph.

(e) The Commission shall require republication of the notice if it is found to be inadequate.

[43 FR 30557, July 17, 1978, as amended at 43 FR 45588, Oct. 3, 1978. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 48 FR 54236, Dec. 1, 1983]

§ 1152.13 Amendment of the system diagram map.

(a) Each carrier shall be responsible for maintaining the continuing accuracy of its system diagram map and the accompanying line descriptions. Amendments may be filed at any time and will be subject to all carrier filing and publication requirements of § 1152.12.

(b) Every system diagram listing a line in category 2 (§ 1152.10(b)(2)) shall be revised annually. Each annual revision shall clearly reflect the carrier's decision whether to transfer each such line to category 1 or 5 (§ 1152.10(b)(1) or (5)) or to retain the line in category 2 for further study.

(c) By June 30 of each year, each carrier shall file with the Commission:

(1) An revised and updated color-coded system diagram map and line descriptions which shall be subject to the filing and publication requirements of § 1152.12.

(2) A verified statement by a corporate officer having authority to so certify that no change has occurred in the categories of lines shown on its most recently filed system diagram map and accompanying descriptions.

(d) Under 49 U.S.C. 10904, the Commission is precluded from issuing a certificate of abandonment or discontinuance if the abandonment or discontinuance application is opposed by a significant user, a State, or a political subdivision of a State unless the line involved is identified and described on the system diagram map for at least 4 months prior to the filing of such application. The 4-month minimum notice period of section 10904(e)(3) will be deemed to have commenced only for a line or portion of a line which is designated on the carrier's system diagram map as a line in category 1 (§ 1152.10(b)(1)).

[41 FR 48520, Nov. 4, 1976, as amended at 43 FR 30557, July 17, 1978; 45 FR 18008, Mar. 20, 1980. Redesignated and amended at 47 FR 49581, Nov. 1, 1982; 48 FR 54236, Dec. 1, 1983]

§ 1152.14 Availability of data.

Each carrier shall provide to the designated state agency, upon request, information concerning the net liquidation value (as defined in § 1152.34(c)) of any line placed in category 1 (§ 1152.10(b)(1)) on its system diagram map or line description together with a description of such a line and any appurtenant facilities and of their condition.

[41 FR 48520, Nov. 4, 1976, as amended at 43 FR 7624, Feb. 24, 1978. Redesignated at 47 FR 49581, Nov. 1, 1982]

§ 1152.15 Reservation of jurisdiction.

49 U.S.C. 10904(e)(1) authorizes the Commission, at its discretion, to provide for designation of lines as "potentially subject to abandonment" under standards which vary by region of the Nation, by railroad, or by group of railroads. The Commission expressly reserves the right to adopt such varying standards in the future.

[41 FR 48520, Nov. 4, 1976. Redesignated and amended at 47 FR 49581, Nov. 1, 1982]

Subpart C—Procedures Governing Notice, Applications, Financial Assistance, and Acquisition for Public Use

§ 1152.20 Notice of intent to abandon or discontinue service.

(a) *Filing and publication requirements.* An applicant shall give Notice of Intent to file an abandonment or discontinuance application by complying with the following procedures:

(1) *Filing.* Applicant must serve its Notice of Intent on the Commission, by certified letter, in the format prescribed in § 1152.21. The Notice shall be filed in accordance with the time requirements of paragraph (b) of this section.

(2) *Service.* Applicant must serve, by first-class mail (unless otherwise specified), its Notice of Intent upon: (i) Significant users of the line; (ii) the Governor (by certified mail) of each State directly affected by the abandonment or discontinuance; (iii) the Public Service Commission (or equivalent agency) in these States: (iv) The designated State agency in these States; (v) The State Cooperative Extension Service in these States; (vi) the U.S. Department of Transportation (Federal Railroad Administration); (vii) the U.S. Department of Defense (Military Traffic Management Command); (viii) the U.S. Department of Interior (Bureau of Outdoor Recreation) (Recreation Resources Assistance Division, National Park Service), and (Land Resources Division, National Park Service); (ix) the U.S. Railroad

Retirement Board; (x) the Commission's Office of Special Counsel; (xi) the National Railroad Passenger Corporation ("Amtrak") (if Amtrak operates over the involved line); (xii) the headquarters of the Railroad Labor Executives' Association; and (xiii) the U.S. Department of Agriculture, Chief of the Forest Service. For purposes of this subsection "directly affected States" are those in which any part of a line sought to be abandoned is located.

(3) *Posting.* Applicant must post a copy of its Notice of Intent at each agency station and terminal on the line to be abandoned. (If there are no agency stations on the line, the Notice of Intent should be posted at any agency station through which business for the involved line is received or forwarded.)

(4) *Newspaper publication.* Applicant must publish its Notice of Intent at least once during each of 3 consecutive weeks in a newspaper of general circulation in each county in which any part of the involved line is located.

(b) *Time limits.* (1) The Notice of Intent must be served at least 15 days, but not more than 30 days, prior to the filing of the abandonment application;

(2) The Notice must be posted and fully published within the 30-day period prior to the filing of the application; and

(3) The Notice must be filed with the Commission either concurrently with service or when the Notice is first published (whichever occurs first).

(c) *Historic site data.* When a carrier files a Notice of Intent, it must also submit the historic site data described at § 1105.7(c)(10). This information must be submitted to the Commission and to the State Historic Preservation Officer (as defined in 36 CFR 800.2(h)) of each State in which any part of the involved line is located.

(d) At the same time it serves upon the Commission its notice of intent to abandon a line, the carrier shall comply with the environmental notice procedure provided in § 1105.11.

[48 FR 54236, Dec. 1, 1983, and 49 FR 15088, Apr. 17, 1984, as amended at 55 FR 31600, Aug. 3, 1990]

§ 1152.21 Form of notice.

The notice of intent to abandon or to discontinue service shall be in the following form:

No. AB (Sub-No.)

NOTICE OF INTENT TO ABANDON OR TO DISCONTINUE SERVICE

(Name of Applicant) gives notice that on or about (insert date application will be filed with the Commission) it intends to file with the Interstate Commerce Commission, Washington, D.C. 20423, an application for a certificate permitting the abandonment of (the discontinuance of service on), a line of railroad known as extending from railroad milepost near (station name) to (the end of line or rail milepost) near (station name), a distance of miles, in County(ies), State(s). The line for which the abandonment (or discontinuance) application will be filed includes the stations of (list all stations on the line in order of milepost number, indicating milepost location).

The reason(s) for the proposed abandonment (or discontinuance) is (are) (explain briefly and clearly why the proposed action is being undertaken by the applicant). Based on information in our possession, the line (does) (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

This line of railroad has appeared on the system diagram map in category 1 since (insert date).

The interest of railroad employees will be protected by (specify the appropriate conditions).

Any interested person, after the application is filed on (insert date), is entitled to file with the Interstate Commerce Commission written comments concerning the proposed abandonment (or discontinuance) or protests to it.

Protests must contain the following:

(1) Protestant's name, address and business.

(2) A statement describing protestant's interest in the proceeding including:

(i) A description of protestant's use of the line;

(ii) If protestant does not use the line, information concerning the group or public interest it represents; and

(iii) If protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available).

(3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the in-

volved service [this information must be supported by affidavits of persons with personal knowledge of the fact(s)].

(4) Any rebuttal of material submitted by applicant.

(5) If an oral hearing is desired, a request for and reasons why an oral hearing is necessary.

In addition, a commenting party or protestant may provide a statement of position and a summary of evidence regarding:

(i) Intent to offer financial assistance;

(ii) Environmental impact;

(iii) Impact on rural and community development;

(iv) Suitability of the properties for other public purposes;

(v) Recommended provisions for protection of the interests of employees; and

(vi) Prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and § 1152.29.

Written comments and protests will be considered by the Commission in determining whether an investigation is needed to assist in determining what disposition to make of the application. The Commission will automatically direct investigation if a protest is filed which demonstrates: (1) The protestant filed a feeder line application under 49 U.S.C. 10910; (2) the feeder line application involves any portion of the rail line involved in the abandonment or discontinuance application; (3) the feeder line application was filed prior to the date the abandonment or discontinuance application was filed; and (4) the feeder line application is pending before the Commission. If an investigation is conducted, the commenting party or protestant may participate in the proceeding as its interests may appear.

Those parties filing protests to the proposed abandonment (or discontinuance) should be prepared to participate actively in either oral hearing or through the submission of additional material in the form of verified statements. Parties seeking information concerning the filing of protests should refer to § 1152.25.

Written comments and protests should indicate the proceeding designation No. AB———— (Sub-No.———) and should be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, no later than (insert the date 30 days after the date applicant intends to file its application). Interested persons may file a written comment or protest with the Commission to become a party to this abandonment (or discontinuance) proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant (insert name, address, and phone number). The original and 2 copies of all comments or protests shall be filed with the Commission with a certificate of service.

If no protests are received within 30 days after the application is filed, the Commission will grant the abandonment (or discontinuance) request and issue a certificate which permits the abandonment (or discontinuance) to occur within 75 days after the application is filed.

The line sought to be abandoned (or discontinued) will be available for subsidy or sale for continued rail use, if the Commission decides to permit the abandonment (or discontinuance), in accordance with applicable laws and regulations (49 U.S.C. 10905 and 49 CFR 1152.27). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is (insert name and business address).

Persons seeking further information concerning abandonment procedures may contact the Interstate Commerce Commission's Rail Section, Office of Proceedings or the Office of Transportation Analysis, Rail Services Planning Office, or refer to the full abandonment or discontinuance regulations at 49 CFR Part 1152.

A copy of the application will be available for public inspection on or after (insert date abandonment application is to be filed with Commission) at each agency station or terminal on the line proposed to be abandoned or discontinued [if there is no agency station on the line, the application shall be deposited at any agency station through which business for the line is received or forwarded (insert name, address, location, and business hours)]. The carrier shall furnish a copy of the application to any interested person proposing to file a protest or comment, upon request.

[48 FR 54237, Dec. 1, 1983, as amended at 51 FR 16852, May 7, 1986; 55 FR 31600, Aug. 3, 1990]

§ 1152.22 Contents of application.

Applications for certificates of public convenience and necessity permitting the abandonment of railroad lines or the discontinuance of rail service shall contain the following information and each paragraph (a) through (i) of this section shall be attested to by a person having personal knowledge of the matters contained therein:

(a) *General.* (1) Exact name of applicant.

(2) Whether applicant is a common carrier by railroad subject to the Interstate Commerce Act.

(3) Whether the carrier which owns or operates the line of railroad to be abandoned or over which service is to be discontinued is a part of any railroad system.

(4) Relief sought (abandonment of line or discontinuance of service).

(5) Detailed map of the subject line on a sheet not larger than 8 x 10½ inches, drawn to scale, and with the scale shown thereon. The map must show, in clear relief, the exact location of the rail line to be abandoned or over which service is to be discontinued and its relation to other rail lines in the area, highways, water routes, and population centers.

(6) Reference to inclusion of the rail line to be abandoned or over which service is to be discontinued on the carrier's system diagram map, in compliance with §§ 1152.10 through 1152.13, and the date upon which such line was first listed on the system diagram map in category 1 in accordance with § 1152.10(b)(1). A copy of the line description which accompanies the system diagram map shall also be submitted.

(7) Detailed statement of reasons for filing application.

(8) Name, title, and address of representative of applicant to whom correspondence should be sent.

(b) *Condition of properties.* (1) The present physical condition of the line including any operating restrictions and estimate of deferred maintenance and rehabilitation costs (e.g., number of ties that need replacing, miles of rail that need replacing and/or new ballast, bridge repairs or replacement needed, and estimated labor expenses necessary to upgrade the line to minimum Federal Railroad Administration Class I safety standards). The bases for the estimates shall be stated with particularity, and workpapers shall be made available upon request of the Commission or any interested persons.

(2) Statement whether the line, or any portion of line, could be operated profitably if necessary deferred maintenance and rehabilitation were performed.

(c) *Service provided.* Description of the service performed on the line during each of the 2 calendar years immediately preceding the filing of the application, for that part of the current year for which information is available, and for the base year (as defined by § 1152.2(c)), if different, including the actual:

(1) Number of trains operated and their frequency.

(2) Miles of track operated (include main line and all railroad-owned sidings).

(3) Average number of locomotive units operated.

(4) Carload commodity group tonnage on the line.

(5) Overhead or bridge traffic by carload commodity group tonnage (include detailed information on overhead or bridge traffic to be retained by the carrier).

(6) Average crew size.

(7) Level of maintenance.

(8) Any inportant changes in train service undertaken in the 5 calendar years immediately preceding the filing of the application.

(9) Reasons for decline in traffic, if any, in the best judgment of applicant.

(d) *Revenue and cost data.* (1) Computation of the revenues attributable and avoidable costs for the line to be abandoned for the base year (as defined by § 1152.2(c) and to the extent such branch level data is available), in accordance with the methodology prescribed in §§ 1152.31 through 1152.33, as applicable, and submitted in the form called for in § 1152.36, as Exhibit 1.

(2) The same computation shall be made for the 2 calendar years immediately preceding the filing of the application and for that part of the current year for which information is available using data collected at the branch level to the extent available and otherwise allocating system revenues and expenses to the line. The basis for any such allocation shall be stated with particularity.

(3) The carrier shall compute an estimate of the future revenues attributable, avoidable costs and reasonable return on the value for the line to be abandoned, for the "Forecast Year" (as defined in § 1152.2(h)) in the form called for in Exhibit 1. The carrier shall fully support and document all dollar amounts shown in the Forecast year column including an explanation

of the rationale and key assumptions used to determine the Forecast Year amounts.

(4) The carrier shall also compute an "Estimated Subsidy Payment" for the base year in the form called for in Exhibit 1 and an alternate payment to reflect (i) increases or decreases in attributable revenues and avoidable costs projected for the subsidy year and (ii) an estimate, in reasonable detail, of the cash income tax reductions, Federal and State, to be realized in the subsidy year. The bases for the adjustment, e.g., rate increase, changes in traffic level, necessary maintenance to comply with minimum Federal Railroad Administration Class I safety standards, shall be stated with particularity.

(5) If the line to be abandoned or over which service is to be discontinued is less than the entire mileage owned or operated by the carrier, a detailed statement showing the effect of the proposed abandonment or discontinuance on its net railway operating income for each of the 2 calendar years immediately preceding the filing of the application and for that part of the current year for which information is available.

(6) If the line to be abandoned or over which service to be discontinued is operated as a part of a system under common control and management, a detailed statement showing the effect of the proposed abandonment or discontinuance on the net railway operating income of the other individual members of the system for each of the 2 calendar years immediately preceding the filing of the application and for that part of the current year for which information is available.

(e) *Rural and community impact.* (1) The name and population (identify source and date of figures) of each community in which a station on the line is located.

(2) Identification of significant users, as defined in § 1152.2(n), by name, address, principal commodity, and by tonnage and/or carloads for each of the 2 calendar years immediately preceding the filing of the abandonment or discontinuance application and for that part of the current year for which information is available.

(3) Detailed description of the alternate sources of transportation service (rail, motor, water, air) available, including a detailed description and nature of operations, and the highway network in the proximate area.

(4) Statement of efforts which have been made to continue service through solicitation of additional traffic, and the sale or subsidy of the line and the results of those efforts.

(5) Statement of whether the properties proposed to be abandoned are suitable for use for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.

(f) *Environmental impact.* The applicant shall submit information regarding the environmental impact of the proposed abandonment or discontinuance in compliance with § 1105.7. If certain information required by the environmental regulations duplicates information required elsewhere in the application, the environmental information requirements may be met by a specific reference to the location of the information elsewhere in the application.

(g) *Passenger service.* If passenger service is provided on the line, the applicant shall state whether appropriate steps have been taken for discontinuance pursuant to 49 U.S.C. 10908-10909 or the Rail Passenger Service Act. (45 U.S.C. 501 *et seq.*)

(h) *Financial statements.* (1) Carrier's general balance sheet as of the latest date available.

(2) Carrier's income statement for each of the 2 calendar years immediately preceding the filing of the application for abandonment or discontinuance and for that portion of the current year for which information is available.

(i) *Additional information.* The application shall submit such additional information to support its application as the Commission may require.

(j) *Verification.* The original application shall be executed and verified in the form set forth below by an officer of the carrier having knowledge of the facts and matters relied upon.

VERIFICATION

State of ——————— ss.
County of ———————

——————————— (Name of affiant) makes oath and says that he is the —————— (Title of Affiant) of the ——————— (Name of applicant) applicant herein; that he has been authorized by the applicant (or as appropriate, a court) to verify and file with the Interstate Commerce Commission the foregoing application in AB- ——— (Sub-No. ———); that he has carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that he has knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of his knowledge, information, and belief.

———————————
(Signature)

Subscribed and sworn to before me ——— in and for the State and County above named, this ——— day of ————, 19—.

———————————

My commission expires ———————————

[41 FR 48520, Nov. 4, 1976, as amended at 42 FR 25327, May 17, 1977; 43 FR 30557, July 17, 1978; 43 FR 45588, Oct. 3, 1978; 46 FR 45348, Sept. 11, 1981. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 48 FR 44828, Sept. 30, 1983; 48 FR 54237, Dec. 1, 1983; 53 FR 49667, Dec. 9, 1988; 54 FR 18517, May 1, 1989]

§ 1152.23 Summary application.

(a) If the applicant anticipates no substantial or material opposition to an application for abandonment or discontinuance, it may omit from the application the information required under § 1152.22, except that required under paragraphs (a), (d)(3), (e), (f), and (i) of that section. All notice and publication requirements of §§ 1152.20, 1152.21, and 1152.22 must be followed for a summary application.

(b) A summary application must contain a certification that applicant is not aware of any substantial and material objection to the application.

(c) If an investigation is ordered to be conducted (§ 1152.26), of a summary application, the applicant must file the remainder of the information required in a standard long-form application under § 1152.22 within 60 days of the service date of the Commission's order instituting the investigation. The actual date of filing of the application, as supplemented, for the purposes of complying with all statutory timetables, shall be deemed to be the date upon which such additional complete information is received by the Commission.

(d) If the information necessary to complete a summary application which has been made the subject of an investigation is not received by the Commission within the 60 day period under paragraph (c) of this section, the summary application may not be refiled prior to 1 calendar year from the service date of the order of dismissal.

(e) A check or money order payable to the Interstate Commerce Commission must be submitted with the application to cover the applicable filing fee.

[41 FR 48520, Nov. 4, 1976. Redesignated at 47 FR 49581, Nov. 1, 1982 and amended at 48 FR 54238, Dec. 1, 1983; 49 FR 18494, May 1, 1984]

§ 1152.24 Filing and service of application.

(a) An original and 10 copies of applications, typewritten or printed on paper approximately 8½ inches by 11 inches with 1½ inch left margin shall be filed with the Secretary of the Interstate Commerce Commission, Washington, DC 20423. The original shall bear the date and signature and shall be complete in itself; the signature may be stamped or typed and the notarial seal may be omitted on the copies. A check or money order payable to the Interstate Commerce Commission must also be submitted to cover the applicable filing fee.

(b) The applicant shall tender with its application an affidavit attesting to its compliance with the notice requirement of § 1152.20. The affidavit shall include the dates of service, posting, and publication of the notice.

(c) When the application is filed with the Commission, the applicant shall serve, by first class mail, a copy on the Governor, the Public Service

Commission (or equivalent agency), and the designated State agency of each State in which any part of the line of railroad sought to be abandoned or discontinued is situated, and on the Commission's Section of Rail Services Planning. A copy of the application will be available for public inspection, on or after the date the abandonment application is filed with the Commission, at each agency station or terminal on the line proposed to be abandoned or discontinued (if there is no agency station on the line, the application shall be deposited at any agency station through which business for the line is received or forwarded). A certificate of service shall be promptly filed with the Commission.

(d) The applicant shall promptly furnish by first class mail a copy of the application to any interested person proposing to file a written comment or petition to investigate upon request. A certificate of service shall promptly be filed with the Commission.

(e)(1) The Commission shall reject any abandonment or discontinuance application which does not substantially conform to the regulations in this Subpart C regarding notice, form, and content or which applies to a line which has not properly been published on the carrier's system diagram map in conformance with the regulations of subpart B of this part.

(2) Upon the filing of an abandonment or discontinuance application, the Commission will review the application and determine whether it conforms with all applicable regulations. If the application is substantially incomplete or its filing otherwise defective, the Commission shall reject the application for stated reasons by order (which order will be administratively final) within 20 days from the date of filing of the application.

(3) A revised application may be submitted, and the Commission will determine whether the resubmitted application conforms with all prescribed regulations. A properly revised application submitted with 60 days of the order rejecting the incomplete or improper application need not be subjected to new notice and publication under § 1152.20, unless the defect causing the rejection was in the notice and/or publication. A revised application submitted after such 60-day period must be newly published and noticed.

(4) The resubmission of an abandonment or discontinuance application shall be considered a de novo filing for the purposes of computation of the time periods prescribed in 49 U.S.C. 10904, *Provided*, That a resubmitted application is deemed complete and proper.

(5) An applicant may seek waiver of specific regulations listed in Subpart C of this part by filing a petition for waiver with the Commission. A decision by the Director of the Office of Proceedings granting or denying a waiver petition will be issued within 30 days of the date the petition is filed. Appeals from the Director's decision will be decided by the entire Commission. If waiver is not obtained prior to the filing of the application, the application may be subject to rejection under paragraphs (e)(1) and (2) of this section.

[41 FR 48520, Nov. 4, 1976. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 48 FR 44828, Sept. 30, 1983; 48 FR 54238, Dec. 1, 1983; 49 FR 14955, Apr. 16, 1984; 53 FR 19302, May 27, 1988]

§ 1152.25 Participation in abandonment or discontinuance proceedings.

(a) *Public participation*—(1) *Protests and comments.* Interested persons may become parties to an abandonment or discontinuance proceeding by filing written comments or protests with the Commission. Protests must contain the following information:

(i) Protestant's name, address and business.

(ii) A statement describing protestant's interest in the proceeding including:

(A) A description of protestant's use of the line;

(B) If protestant does not use the line, information concerning the group or public interest it represents; and

(C) If protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available).

(iii) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service (this information must be supported by affidavits of persons with personal knowledge of the fact(s)).

(iv) Any rebuttal of material submitted by applicant.

(v) If an oral hearing is desired, a request for and reasons why an oral hearing is necessary.

(2) *Additional information.* In addition to the information required in paragraph (a)(1) of this section, a commenting party or protestant may provide a statement of position and a summary of evidence regarding:

(i) Intent to offer financial assistance;

(ii) Environmental impact;

(iii) Impact on rural and community development;

(iv) Suitability of the properties for other public purposes (See § 1152.28(a)(2));

(v) Recommended provisions for protection of the interests of employees; and

(vi) Prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

(3) *Investigations.* (i) Based on the written comments and protests, the Commission will determine whether an investigation is needed to assist in determining what disposition to make of the application. The Commission will automatically direct investigation if a protest is filed which demonstrates:

(A) The protestant filed a feeder line application under 49 U.S.C. 10910;

(B) The feeder line application involves any portion of the rail line involved in the abandonment or discontinuance application;

(C) The feeder line application was filed prior to the date the abandonment or discontinuance application was filed; and

(D) The feeder line application is pending before the Commission.

(ii) If an investigation is conducted, parties filing written comments or protests may participate in the investigated proceeding. A party filing a protest should be prepared to actively participate either in modified procedure investigation (i.e. through the submission of written verified statements) or in oral hearing.

(b) *Employee or employee representative participation.* Employees or their representatives may file protests or comments to an application. However, since the Commission will impose employee protective conditions under 49 U.S.C. 10903(b)(2) if an application is granted, employees and their representatives need not file comments or protests seeking this protection.

(c) *Filing and service of written comments, protests, and replies.* (1) Written comments and protests shall be filed with the Commission (the Secretary, Interstate Commerce Commission, Washington, DC 20423) within 30 days of the filing with the Commission of an abandonment or discontinuance application. The proposed date of filing of an abandonment or discontinuance application shall be included in the Notice of Intent required in §§ 1152.20 through 1152.21.

(2) An original and 10 copies of each written comment or protest shall be filed with the Commission.

(3) A copy of each written comment or protest shall be served on applicant or its representative at the time of filing with the Commission. Each filing shall contain a certificate of service.

(4) Replies to written comments and protests will be considered by the Commission provided they are filed and served within 5 days of the due date of the pleadings they address. An original and 10 copies of such replies shall be filed with the Commission.

(d) *Time limits.* (1) Pleadings, requests or other papers or documents (including any comments or protests and any appeal from a Commission decision) required or permitted to be filed under this part must be received for filing at the Commission's Offices at Washington, DC within the time limits, if any, for such filing. The date of receipt at the Commission and not the date of deposit in the mails is determinative, provided, however, that if such document is mailed by certified, registered, or express mail, postmarked at least 3 days prior to the due date, it will be accepted as timely filed.

(2) In computing any time period prescribed or allowed by this part, the day of the act, event, or default after which the designated period of time begins to run is not to be included.

(3) Any filing under this part which falls due on a Saturday, Sunday, or a legal holiday in the District of Columbia, may be filed at the Commission by the end of the next day which is neither a Saturday, Sunday, nor a holiday, except as indicated in paragraph (d)(4) of this section. A half holiday shall not be considered as a holiday.

(4) Offers of financial assistance made pursuant to § 1152.27(c) must be filed on or before their statutory due date as computed in paragraph (d)(2) of this section, regardless of whether that date is a Saturday, Sunday, or a legal holiday in the District of Columbia.

(5) The Commission will reject any pleading filed after its due date unless good cause is shown why the pleading is filed late.

(6) Modified procedure: (i) If the Commission decides to institute an investigation under the modified procedure, the following time limits shall govern the submission of evidence:

(A) Applicant's initial verified statements due no later than 15 days after the date the decision instituting an investigation is served;

(B) Protestant's verified statements due no later than 40 days after the date the decision instituting an investigation is served; and

(C) Applicant's reply verified statements due no later than 55 days after the date the decision instituting an investigation is served.

(ii) Under the schedule established in paragraph (d)(6)(i) of this section, parties shall not be permitted to file motions to strike all or part of any evidence submitted.

(7) Oral Hearings: (i) If the Commission decides to institute an investigation through oral hearing, the oral hearing shall be for the primary purpose of cross examination of witnesses filing verified statements pursuant to paragraph (d)(7)(ii) of this section. Any direct testimony, other than applicant's rebuttal evidence, shall be received at the discretion of the hearing officer.

(ii) The following time limits shall govern the submission of written evidence prior to the commencement of the hearing:

(A) Applicant's initial verified statements due no later than 15 days after the date the decision instituting an investigation is served; and

(B) Protestant's verified statements due no later than 40 days after the date the decision instituting an investigation is served. Any rebuttal evidence by applicant shall be received in the form of testimony at the oral hearing.

(iii) Post hearing legal briefs shall be due 20 days after the close of the oral hearing, or at an earlier date if established at the hearing by the hearing officer.

(e) *Appellate procedures*—(1) *Scope of rule.* Except as specifically indicated below, these appellate procedures are to be followed in abandonment and discontinuance proceedings in lieu of the general procedures at 49 CFR 1115. Appeals of initial decisions of the Director of the Office of Proceedings determining:

(i) Whether to designate protested abandonment proceedings for investigation (including action on requests for oral hearing);

(ii) Whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d) for purposes of negotiations or, in exemption proceedings, for purposes of partial revocation and negotiations;

(iii) Whether partially to revoke or to reopen abandonment exemptions authorized, respectively, under 49 U.S.C. 10505 and 49 CFR part 1152 subpart F for the purpose of imposing public use conditions under the criteria in 49 CFR 1152.28 and/or conditions limiting salvage of the rail properties for environmental and historic preservation purposes; and

(iv) The applicability and administration of the Trails Act [16 U.S.C. 1247(d)] in abandonment proceedings under 49 U.S.C. 10903-04 (and abandonment exemption proceedings) as set forth in 49 CFR 1011.8(c)(4) and (5) will be acted on by the entire Commission as set forth at 49 CFR 1011.2(a)(8).

An original and 10 copies of all appeals, and replies to appeals, under this section should be filed with the Commission.

(2) *Appeals criteria.* (i) Appeals to the initial decision in non-protested proceedings or non-investigated (protested) proceedings will not be entertained. Those decisions are administratively final upon the date they are served.

(A) In a protested but not investigated proceeding, parties seeking further administrative action may file a petition to reopen the proceeding under paragraph (e)(6) of this section. If an abandonment or discontinuance is granted and a party wishes the Commission to consider a petition to reopen before the abandonment or discontinuance certificate becomes effective, it must file its petition within 15 days after the administratively final decision is served (together with any necessary request for a stay of the certificate's effectiveness). If a petition is received within that 15 day period, any replies to the petition must be filed no later than 25 days after the date the decision is served. The Commission will then announce whether it will grant the petition (and reopen the proceeding) by the 120th day after the application was filed (the last date upon which the certificate could become effective).

(B) In a proceeding that is not protested, since the Commission is required to authorize abandonment or discontinuance, the only subsequent pleadings permitted are petitions to vacate the certificate filed under paragraph (e)(8) of this section.

(ii) In investigated proceedings, the Commission may hear appeals in its discretion, if it finds that either:

(A) The action (if taken by an administrative law judge, an employee board, or a division) involves a matter of general transportation importance, or

(B) The action would be affected materially because of new evidence, changed circumstances, or material error.

(3) *Time limits.* (i) Any appeal from the initial decision in an investigated proceeding shall be filed no later than 20 days after the date the initial decision is served.

(ii) The Commission will announce whether it will hear an appeal filed under paragraph (e)(3)(i) of this section within 30 days after the date the initial decision is served. If the Commission decides to hear the appeal, other parties will be afforded 15 days from the date of service of the decision to file replies to the appeals.

(iii) In order to exhaust its administrative remedies, a party must file an appeal under paragraph (e)(3)(i) of this section from the initial decision in an investigated proceeding no later than 20 days after the date the initial decision is served before seeking judicial review. In the event an appeal is timely filed, administratively final action for the purposes of this rule is deemed to occur when the Commission (A) issues its decision not to hear the appeal, (B) fails to issue such a decision within 30 days after the date the initial decision was served, or (C) hears the appeal and issues a decision on the appeal. If the Commission decides to hear the appeal, the decision to hear the appeal will operate as an automatic stay and no certificate will be issued until the Commission has acted on the appeal.

(4) *Form.* An appeal and any reply shall not exceed 30 pages in length, including the index of subject matter, argument, and appendices or other attachments.

(5) To the extent that an appeal requests further hearing, rehearing, reargument, or reconsideration, the appeal shall state in detail the nature of the relief requested and the reasons therefor. When a party seeks an opportunity to introduce evidence, the appeal must state briefly the evidence, explain why it is not cumulative, and explain why it was not previously adduced.

(6) Petitions to reopen administratively final actions: Except as provided for in paragraph (e)(2)(i)(B) of this section, a person may file a petition to reopen any administratively final action of the Commission. A petition to reopen shall state in detail the respects in which the proceeding involves material error, new evidence, or

substantially changed circumstances. An original and 10 copies of such petitions should be filed with the Commission.

(7) Judicial review: (i) Parties may seek judicial review of a Commission action in an abandonment or discontinuance proceeding on the day the action of the Commission becomes final.

(ii) If an appeal or a petition seeking reopening is filed under this section, before or after a petition seeking judicial review is filed with the courts, the Commission will act upon the appeal or petition after advising the court of its pendency unless action might interfere with the court's jurisdiction.

(8) Petitions to vacate certificates: In the event of procedural defects (such as the loss of a properly filed protest, the failure of the applicant to afford the public the requisite notice of its proposed abandonment, etc.) the Commission will entertain petitions to vacate certificates in these abandonment or discontinuance proceedings. An original and 10 copies of these petitions to vacate should be filed with the Commission.

(9) *Petitions to stay.* (i) The filing of an appeal shall not stay the effect of a prior action. An original and 10 copies of any petitions to stay should be filed with the Commission.

(ii) If an appeal is filed in an investigated proceeding, under paragraph (e)(2)(ii) of this section, a petition to stay is unnecessary and inappropriate. A certificate will not have been issued at that time and, if the Commission decides to hear the appeal, will not be issued until the Commission has acted upon the appeal. Therefore, there is no action requiring a stay.

(iii) A petition to reopen an administratively final action in a protested but non-investigated proceeding may be accompanied by a petition for a stay of the effectiveness of a certificate of abandonment or discontinuance, which permits the abandonment or discontinuance to occur prior to 120 days after the application is filed. The petitions may seek postponement of the effectiveness of the certificate only until the 120th day after the application is filed. The petitions may seek postponement of the effectiveness of the certificate only until the 120th day after the application is filed, when effectiveness is required by law (49 U.S.C. 10904(c)(2)).

(iv) A party may petition for a stay of the effectiveness of a certificate of abandonment or discontinuance pending a request for judicial review. The reasons for the desired relief shall be stated in the petition, and the petition shall be filed not less than 10 days prior to the effective date of the certificate. No reply need be filed. If a party elects to file a reply, the reply must reach the Commission no later than 5 days after the petition is filed.

[46 FR 45348, Sept. 11, 1981. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 47 FR 49582, Nov. 1, 1982; 48 FR 54238, Dec. 1, 1983; 49 FR 15087, Apr. 17, 1984; 51 FR 16852, May 7, 1986; 51 FR 21559, June 13, 1986; 53 FR 3401, Feb. 5, 1988; 53 FR 19302, May 27, 1988]

§ 1152.26 Commission determination and certification under 49 U.S.C. 10904.

(a) If no protests to an application are filed under § 1152.25, the Commission shall (1) find that the public convenience and necessity require or permit the abandonment or discontinuance, and (2) no later than 45 days after the application is filed, issue a certificate which permits the abandonment or discontinuance to occur within 75 days after the application is filed.

(b) Upon receipt of a protest to an application under § 1152.25, the Commission shall, no later than 45 days after the application is filed, determine whether an investigation is needed to assist in determining what disposition to make of the application.

(1) If no investigation is instituted, the Commission shall issue a decision no later than 75 days after the date the application is filed. If the Commission finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance, it shall issue a certificate no later than 90 days after the application is filed permitting the abandonment or discontinuance to occur no later than 120 days after the application is filed (unless the financial assistance procedures provided for in § 1152.27 have not been concluded).

(2) If the Commission decides to institute an investigation, the investigation shall be completed no later than 135 days, and an initial decision issued no later than 165 days, after the date the application is filed.

(i) The initial decision following an investigation shall become the final decision of the Commission unless, during the 30 days following the initial decision, the Commission decides to hear appeals in accordance with the criteria set forth in § 1152.25(e)(2)(ii).

(ii) If an initial decision following an investigation is appealed, and considered by the Commission in its discretion, the Commission shall issue a final decision no later than 255 days after the date the application is filed.

(iii) Whenever the Commission finds, following an investigation, that the present or future public convenience and necessity require or permit the abandonment or discontinuance, the Commission will issue a certificate no later than 15 days following the final decision, permitting the abandonment or discontinuance to occur no later than 75 days following issuance of the final decision (unless the financial assistance procedures provided for in § 1152.27 have not been concluded).

(3) A copy of the decision instituting an investigation of an abandonment or discontinuance application shall be served on the carrier which owns or operates the line of railroad or its representative. Copies of the decision shall also be served by the Commission on all parties which filed written comments and on all persons upon which copies of the application are required to be served under § 1152.24(c).

[46 FR 45350, Sept. 11, 1981; 46 FR 48216, Oct. 1, 1981. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 48 FR 54238, Dec. 1, 1983]

§ 1152.27 Financial assistance procedures.

(a) *Provision of information.* An applicant must provide promptly upon request to a party considering an offer of financial assistance to continue existing rail service, and concurrently to the Commission, the following:

(1)(i) *In an application proceeding,* an estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation;

(ii) *In an exemption proceeding,* either an estimate of the annual subsidy or the minimum purchase price, depending upon the type of financial assistance indicated in the potential offeror's formal expression of intent submitted under paragraph (c)(2)(i) of this section;

(2) Its most recent reports on the physical condition of the involved line; and

(3) Traffic, revenue, and other data necessary to determine the amount of annual financial assistance that would be required to continue rail transportation over that part of the railroad line. In an exemption proceeding, the data to be provided must at a minimum include the carrier's estimate of the net liquidation value of the line, with supporting data reflecting available real estate appraisals, assessments of the quality and quantity of track materials in a line, and removal cost estimates (including the cost of transporting removed materials to point of sale or point of storage for relay use), and, if an offer of subsidy is contemplated, an estimate of the cost of rehabilitating the line to Federal Railroad Administration Class I Safety Standards (49 CFR part 213).

(b) *Federal Register notice.* (1) *Abandonment and discontinuance applications.* If the Commission finds that the present or future public convenience and necessity permit or require the proposed abandonment or discontinuance, the Commission will publish these findings in the FEDERAL REGISTER concurrently with the service of the decision. The FEDERAL REGISTER publication will serve as notice to persons intending to offer financial assistance to assure continued rail service under 49 U.S.C. 10905 and these regulations as they relate to abandonment and discontinuance applications.

(2) *Exemption proceedings.* If the Commission exempts a proposed abandonment of a line of railroad from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the Commission will publish notice of this action in the FEDERAL REGISTER. The FEDERAL REGISTER publication will serve as notice to persons with a potential interest in

providing financial assistance to assure continued rail service under 49 U.S.C. 10905 and these regulations as they relate to exempt abandonments and discontinuances.

(c) *Submission of financial assistance offer—(1) Abandonment and discontinuance applications.* (i) *Service and filing.* An offeror must serve its offer of assistance on the carrier owning and operating the line and all parties to the abandonment or discontinuance proceeding. The offer must be filed concurrently with the Secretary, Interstate Commerce Commission, Washington, DC 20423.

(A) An offer may be filed and served at any time after the filing of the abandonment or discontinuance application. Once notice of the abandonment findings is published in the FEDERAL REGISTER, however, the Commission must be notified that an offer has previously been submitted.

(B) An offer, or notification of a previously filed offer, must be filed and served no later than 10 days after the FEDERAL REGISTER publication described in paragraph (b) of this section. This filing and service is subject to the requirements of 49 CFR 1152.25 (d)(1), (d)(2), and (d)(4).

(C) If, after a *bona fide* request, applicant has failed to provide a potential offeror promptly with the information required under paragraph (a) of this section and if that information is not contained in the application, the Commission will entertain petitions to toll the 10-day period for submitting offers of financial assistance under paragraph (c)(1) of this section. Petitions must be filed with the Commission within 5 days after publication in the FEDERAL REGISTER (described in paragraph (b) of this section). Petitions should include copies of the prior written request for information or an accurate outline of the specific information that was orally requested. Replies to these petitions must be filed within 10 days after the publication. These petitions and replies must be filed on or before their actual due date under 49 CFR 1152.25(d)(4). The Commission will issue a decision on petitions within 15 days after publication.

(ii) *Contents of offer.* The offeror shall set forth its offer in detail. The offer must:

(A) Identify the line, or the portion of the line, in question;

(B) Demonstrate that the offeror is financially responsible; that is, that it has or within a reasonable time will have the financial resources to fulfill proposed contractual obligations;

(C) Explain the disparity between the offeror's purchase price or subsidy if it is less than the carrier's estimate under paragraph (a)(1) of this section, and explain how the offer of subsidy or purchase is calculated.

(2) *Exemption proceedings.* (i) *Expression of intent to file offer.* Persons with a potential interest in providing financial assistance must no later than 10 days after the FEDERAL REGISTER publication described in paragraph (b)(2) of this section submit to the carrier and the Commission a formal expression of their intent to file an offer of financial assistance, indicating the type of financial assistance they wish to provide (*i.e.*, subsidy or purchase). Such submissions are subject to the filing requirements of § 1152.25(d)(1) through (d)(3). Submission of a formal expression of intent under this subsection will automatically stay the effective date either of the decision granting an individual exemption or the notice of exemption under the class exemption for 40 days (normally, this will be 10 days beyond the date stated in the FEDERAL REGISTER publication).

(ii) *Service and filing.* An offeror must serve its offer of assistance on the carrier that instituted the exempt filing as well as all other parties to the proceeding. The offer must be filed concurrently with the Secretary, Interstate Commerce Commission, Washington, DC 20423.

(A) An offer may be filed and served at any time after the filing of the exemption petition or notice of exemption. Once notice of exemption is published in the FEDERAL REGISTER, however, the Commission must be notified that an offer has previously been submitted.

(B) An offer, or notification of a previously filed offer, must be filed and served no later than 30 days after the FEDERAL REGISTER publication described in paragraph (b)(2) of this section. This filing and service is subject to the requirements of 49 CFR 1152.25 (d)(1), (d)(2), and (d)(4).

(C) If, after a *bona fide* request, applicant has failed to provide a potential offeror promptly with the information required under paragraph (a) of this section and if that information is not contained in the exemption petition or notice of exemption, the Commission will entertain petitions to toll the 30-day period for submitting offers of financial assistance under paragraph (c)(2) of this section. Petitions must be filed with the Commission within 25 days after publication in the FEDERAL REGISTER (described in paragraph (b)(2) of this section). Petitions should include copies of the prior written request for information or an accurate outline of the specific information that was orally requested. Replies to these petitions must be filed within 30 days after the publication. These petitions and replies must be filed on or before their actual due date under 49 CFR 1152.25(d)(4). The Commission will issue a decision on petitions to toll the offer period within 35 days after publication.

(D) Upon receipt of a formal expression of intent to file an offer under paragraph (c)(2)(i) of this section, applicant may advise the Commission and the potential offeror that additional time is needed to develop the information required under paragraph (a) of this section. Applicant shall expressly indicate the amount of time it considers necessary (not to exceed 60 days) to develop and submit the required information to the potential offeror. For the duration of the time period so indicated by applicant the 30-day period for submitting offers of financial assistance under paragraph (c)(2) of this section shall be tolled without formal Commission action.

(iii) *Contents of offer.* The offeror shall set forth its offer in detail. The offer must meet the requirements of paragraph (c)(1)(ii).

(d) *Access to documents.* Upon receipt by the carrier of a written comment under § 1152.25 or a formal expression of intent under paragraph (c)(2)(i) of this section indicating an intent to offer financial assistance or upon receipt by the carrier of an offer of financial assistance, whichever occurs earlier, the carrier must make available to that party or offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit 1 (§ 1152.36) or, if an exemption proceeding, those documents that would have been used in preparing Exhibit 1 had an abandonment or discontinuance application been filed or whatever records, reports, and other data in the possession of the carrier seeking the exemption which provide data comparable to that which would have been utilized in preparing an Exhibit 1. These documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

(e) *Review of offers.* (1) *Abandonment and discontinuance applications.* The Commission will review each offer submitted to determine if the offeror is a financially responsible person offering assistance which is likely to cover:

(i) The difference between the revenues attributable to the line and the avoidable cost of providing freight service on the line plus a reasonable return on the value of the line, or

(ii) The acquisition cost of all or any portion of the line.

If these criteria are met, the Commission will issue a decision postponing the issuance of a certificate of abandonment or, if a certificate has been issued, postponing the effective date of the certificate. This decision will be issued within 15 days of the FEDERAL REGISTER publication described in paragraph (b) of this section (or five days after the offer is filed if the time for filing has been tolled under paragraph (c)(1)(i)(C) of this section). Under the delegation of authority at § 1011.8, the Director of the Office of Proceedings will make the initial determination whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d) for purposes of negotiations. Appeals of initial decisions determining whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d) for purposes of negotiations will be acted upon by the entire Commission pursuant to the rule set forth at 49 CFR 1011.2(a)(8).

(2) *Exemption proceedings.* The Commission will review each offer submitted to determine if the offeror is a financially responsible person offering assistance which is likely to cover:

(i) The difference between the revenues attributable to the line and the avoidable cost of providing freight service on the line plus a reasonable return on the value of the line; or

(ii) The acquisition cost of all or any portion of the line.

If these criteria are met, the Commission will postpone the effective date either of the decision granting an individual exemption or the notice of exemption under the class exemption and partially revoke the exemption or (in the case of a class exemption) the notice of exemption to the extent it applies to 49 U.S.C. 10905. The decision to postpone and partially revoke will be issued within 35 days of the FEDERAL REGISTER publication described in paragraph (b) of this section (or five days after the offer is filed if the time for filing has been tolled under paragraph (c)(2)(ii)(C) or (c)(2)(ii)(D) of this section). Under the delegation of authority at § 1011.8, the Director of the Office of Proceedings will make the initial determination whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d) for purposes of partial revocation and negotiations. Appeals of initial decisions determinig whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d) for purposes of partial revocation and negotiations will be acted upon by the entire Commission pursuant to the rule set forth at 49 CFR 1011.2(a)(8).

(f) *Agreement on financial assistance.* (1) If the carrier and a person offering financial assistance enter into a subsidy agreement designed to provide for continued rail service, the Commission will postpone the issuance of a certificate authorizing the abandonment or discontinuance. If a certificate, decision granting an individual exemption, or notice of exemption has been issued, the Commission will postpone the effective date of the certificate, decision, or notice of exemption. The postponement will be for as long as the subsidy agreement is in effect.

(2) If the carrier and a person offering to purchase a line enter into a purchase agreement which will result in continued rail service, the Commission will approve the transaction and dismiss the application for abandonment or discontinuance, or the petition for exemption or notice of exemption. Commission approval is not required under 49 U.S.C. 10901 or 11343 for the parties to consummate the transaction or for the purchaser to institute service and operate as a railroad subject to 49 U.S.C. 10501(a).

(g) *Failure to reach agreement on financial assistance.* (1) If the carrier and a financially responsible person fail to agree on the amount or terms of subsidy or purchase, either party may request the Commission to establish the conditions and amount of compensation. This request must be filed with the Commission within 30 days after the offer is made and served concurrently on all parties to the proceeding.

(2) If no agreement is reached within 30 days after the offer of purchase or subsidy is made, and no request is made to the Commission to set the conditions and amount of compensation under paragraph (g)(1) of this section, the Commission will serve either:

(i) A certificate authorizing the abandonment or discontinuance within 10 days after the date the request to set conditions and amount of compensation was due (unless an appeal is being heard under § 1152.25(e)), or

(ii) A decision vacating the prior decision, which postponed the effective date of either the decision granting the exemption or the notice of exemption and partially revoked either the decision granting the exemption or (in the case of a class exemption) the notice of exemption.

The certificate or decision to vacate will be effective on its date of service. If a certificate was issued but its effective date was postponed under paragraph (e) of this section, the certificate will become effective 10 days after the date the request to set conditions and compensation was due (unless an appeal is being heard under § 1152.25(e)).

(h) *Request to establish conditions and compensation for financial assistance.* (1) If the Commission is requested to establish conditions and compensation for financial assistance under paragraph (g)(1) of this section, the Commission will issue a decision within 60 days after the request is due (i.e., within 90 days after the offer is made).

(2) If the applicant receives multiple offers of financial assistance, requests to establish conditions and compensation will not be permitted before the applicant selects the offeror with whom it wishes to transact business. (See paragraph (l)(1) of this section).

(3) A party requesting the Commission to establish conditions and compensation for financial assistance must provide with the request, a narrative indicating the status of the negotiations between the parties and the likelihood of voluntary settlement prior to the issuance of a Commission decision setting terms. The party filing the request must also, within the time period set forth in paragraph (h)(4) of this section, provide reasons why its estimates are correct and the other negotiating party's estimates are incorrect; points of agreement and points of disagreement between the negotiating parties; and evidence substantiating these allegations. The offeror has the burden of proof as to all issues in dispute.

(4) The offeror must submit all evidence and information supporting the terms it seeks within 30 days after the offer is made. The carrier's reply to this evidence and support for the terms it seeks are due within 50 days after the offer is made. The offeror may submit rebuttal evidence within 60 days after the offer is made. Evidence and information submitted after these dates may be rejected.

(5) If requested, the Commission will determine the amount and terms of subsidy based on the avoidable cost of providing continued rail transportation, plus a reasonable return on the value of the line.

(6) If requested, the Commission will determine the price and other terms of sale. The Commission will not set a price below the fair market value of the line (including, unless otherwise agreed upon by the parties, all facilities on the line or portion necessary to provide effective transportation services). Fair market value equals constitutional minimum value which is the greater of the net liquidation value of the line or the going concern value of the line. The constitutional minimum value is computed without regard to labor protection costs.

(7) Within 10 days of the service date of the Commission's decision, the offeror must accept or reject the Commission's terms and conditions with a written notification to the Commission and all parties to the proceeding. If the offeror accepts the terms and conditions set by the Commission, the Commission's decision is binding on both parties. If the offeror withdraws its offer or does not accept the terms and conditions set by the Commission with a timely written notification, the Commission will serve, within 20 days after the service date of the Commission decision setting the terms and conditions, either

(i) a certificate authorizing the abandonment or discontinuance (unless other offers are being considered under paragraph (l) of this section and unless an appeal is being heard under § 1152.25(e)), or

(ii) a decision vacating the prior decision, which postponed the effective date of either the decision granting the exemption or the notice of exemption and partially revoked the exemption or (in the case of a class exemption) the notice of exemption (unless other offers are being considered under paragraph (l) of this section).

The certificate or decision to vacate will be effective on its date of service. If a certificate was issued but its effective date was postponed under paragraph (e) of this section, the certificate will become effective 20 days after the service date of the Commission decision setting the terms and conditions (unless other offers are being considered under paragraph (l) of this section or an appeal is being heard under § 1152.25(e)).

(i) *Substitution of purchasers and disposition after sale.* (1) Prior to the consummation of a purchase under this section, an offeror may substitute its corporate affiliate as the purchaser under an agreement, provided the Commission has determined either

(i) The original offeror has guaranteed the financial responsibility of its affiliate, or

(ii) The affiliate has demonstrated financial responsibility in its own right.

(2) Except as provided in paragraph (i)(3) of this section, a purchaser under this section may not:

(i) Transfer the line or discontinue service over the line prior to the end of the second year after consummation of the original sale under these provisions, or

(ii) Transfer the line, except to the carrier from whom the line was purchased, prior to the end of the fifth year after consummation.

(3) Paragraph (i)(2) of this section does not preclude a purchaser under this section from transferring the line to a corporate affiliate following the consummation of the original sale. Prior Commission approval of the affiliate's acquisition and operation, however, is required under 49 U.S.C. 10901 or 11343. A corporate affiliate acquiring a line under this section is prohibited from discontinuing service over the line or transferring the line to a party that is not a corporate affiliate during the time periods prescribed in paragraph (i)(2) of this section.

(j) *Discontinuance of subsidy.* A subsidizer may discontinue a subsidy under this section by giving 60 days notice of the discontinuance to the applicant and all other parties to the proceeding. Unless another financially responsible party enters into a subsidy agreement as beneficial to the carrier as the discontinued subsidy agreement, the carrier may by filing a request with the Commission and serving the request on all parties to the abandonment or exemption proceeding obtain

(1) A certificate authorizing abandonment or discontinuance of service or

(2) A decision vacating the decision postponing the effective date of either the decision granting the exemption or the notice of exemption.

The Commission will issue a certificate or decision to vacate within 10 days after the filing and service of the request. This certificate or decision to vacate will be effective immediately. If a certificate was issued but its effective date was postponed under paragraph (e) of this section, the certificate will become effective 10 days after the filing and service of the request.

(k) *Default on agreement.* If any party defaults on its obligations under a financial assistance agreement, any other party to the agreement may promptly inform the Commission of that default. Upon notification, the Commission will take appropriate action.

(l) *Multiple offers of financial assistance.* (1) If an applicant receives more than one offer to purchase or subsidize the line, the applicant must select the offeror with whom it wishes to transact business. In abandonment and discontinuance application proceedings within 25 days after the FEDERAL REGISTER publication described in paragraph (b)(1) of this section and in exemption proceedings within 45 days after the FEDERAL REGISTER publication described in paragraph (b)(2) of this section, applicant must:

(i) File a written notification of its selection with the Commission, and

(ii) Serve a copy of the notification on all parties to the proceeding.

(2)(i) *Abandonment and discontinuance applications.* If the applicant has received multiple offers of financial assistance and has selected the offeror with whom it wishes to transact business, the negotiating parties shall complete the sale or subsidy agreement or request the Commission to establish the conditions and amount of compensation within 40 days after the FEDERAL REGISTER publication described in paragraph (b)(1) of this section. The request must be served concurrently on all parties to the proceeding. If no agreement on subsidy or sale is reached within the 40 day period and the Commission has not been requested to establish the conditions and amount of compensation, any other offeror may request the Commission to establish the conditions and amount of compensation. This request must be filed at the Commission within 50 days of the Federal Register publication described in paragraph (b)(1) of this section and served concurrently on all parties to the proceeding. If no other request is filed, the Commission will issue a certificate authorizing abandonment or discontinuance within 60 days of the Federal Register publication described in paragraph (b)(1) of this section (unless an appeal is being heard under § 1152.25(e)). This certificate will be effective immediately. If no other request is filed and a certificate was issued but its effective date was postponed under paragraph (e) of this section, the certificate will become effective 60 days after the Federal Register publication described in paragraph (b)(1) of this section (unless an appeal is being heard under § 1152.25(e)).

(ii) *Exemption proceedings.* If the carrier seeking the exemption has received multiple offers of financial assistance and has selected the offeror with whom it wishes to transact business, the negotiating parties shall complete the sale or subsidy agreement or request the Commission to establish the conditions and amount of compensation within 60 days after the Federal Register publication described in paragraph (b)(2) of this section. The request must be served concurrently on all parties to the proceeding. If no agreement on subsidy or sale is reached within the 60 day period and the Commission has not been requested to establish the conditions and amount of compensation, any other offeror may request the Commission to establish the conditions and amount of compensation. This request must be filed at the Commission within 70 days of the Federal Register publication described in paragraph (b)(2) of this section and served concurrently on all parties to the proceeding. If no other request is filed, the Commission will issue a decision vacating the decision postponing the effective date of either the decision granting exemption or (in the case of a class exemption) the notice of exemption within 80 days of the Federal Register publication described in paragraph (b)(2) of this section. The decision to vacate will be effective immediately.

(3) If the Commission has established the conditions and amount of compensation, and the original offer is withdrawn under paragraph (h)(7) of this section, any other offeror may accept the Commission's decision. If the decision is accepted by another offeror, the Commission will require the applicant to accept the terms incorporated in the Commission's decision.

[48 FR 55129, Dec. 9, 1983, as amended at 50 FR 36432, Sept. 6, 1985; 51 FR 2505, Jan. 17, 1986; 52 FR 48440, Dec. 22, 1987]

§ 1152.28 Public use procedures.

(a)(1) If the Commission finds that the present or future public convenience and necessity require or permit abandonment or discontinuance, the Commission will determine if the involved rail properties are suitable for other public purposes.

(2) A request for a public use condition under 49 U.S.C. 10906 must be in writing and set forth: (i) The condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the time period. A copy of the request shall be mailed to the applicant.

(b) If the Commission finds that the rail properties are suitable for other public purposes, the railroad may dispose of the rail properties only under the conditions described in the Commission's decision. The conditions imposed by the Commission may include a prohibition against the disposal of the rail assets for a period of not more than 180 days from the effective date of the decision authorizing the abandonment or discontinuance, unless the properties have first been offered, on reasonable terms, for sale for public purposes. This period will run concurrently with any other postponements.

[48 FR 54238, Dec. 1, 1983, as amended at 49 FR 15087, Apr. 17, 1984]

§ 1152.29 Prospective use of rights-of-way for interim trail use and rail banking.

(a) If any state, political subdivision, or qualified private organization is interested in acquiring or using a right-of-way of a rail line proposed to be abandoned for interim trail use and rail banking pursuant to 16 U.S.C. 1247(d), it must file a comment (in a regulated abandonment proceeding) or a petition (in an exemption proceeding) indicating that it would like to do so. The comment or petition must include:

(1) A map depicting, and an accurate description of, the right-of-way, or portion thereof (including mileposts), proposed to be acquired or used;

(2) A statement indicating the user's willingness to assume full responsibility: For managing the right-of-way; for any legal liability arising out of the use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability); and for the payment of all taxes assessed against the right-of-way; and

(3) An acknowledgment that interim trail use is subject to the user's continuing to meet its responsibilities described in paragraph (a)(2) of this section, and subject to possible future reconstruction and reactivation of the right-of-way rail service. The statement must be in the following form:

Statement of Willingness to Assume Financial Responsibility

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, ________ (Interim Trail User) is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by ________ (Railroad) and operated by ________ (Railroad). The property, known as ________ (Name of Branch Line), extends from railroad milepost ______, near ________ (Station name), to railroad milepost ______, near ________ (Station name), a distance of ______ miles in ________ County(ies), ________ (State(s)). The right-of-way is part of a line of railroad proposed for abandonment in Docket No. AB-______ (Sub-No. ______

A map of the property depicting the right-of-way is attached.

________ (Interim Trail User) acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad(s) on the same date it is being served on the Commission.

(b)(1) In regular (regulated) abandonment proceedings under 49 U.S.C. 10903-04, interim trail use statements are due within the 30-day protest and comment period following the date the abandonment application is filed. *See* § 1152.25(c).

(i) In every proceeding where a Trails Act request is made, the Commission will determine whether the Trails Act is applicable.

(ii) In a nonprotested proceeding, when a timely trail use statement is filed, the Commission, by the 35th day after the abandonment application is filed, will issue a decision that either:

(A) Finds that the Trails Act is not applicable because of failure to comply with the provisions of § 1152.29(a); or

(B) Finds that the Trails Act is applicable and directs the carrier to notify the Commission, within 5 days, about whether it intends to negotiate an agreement.

If the Trails Act is not applicable, or is applicable but the carrier either does not intend to negotiate an agreement, or does not timely notify the Commission of its intention to negotiate, the public convenience and necessity will be found to require or permit abandonment, and a certificate of abandonment will be issued pursuant to § 1152.26(a). If the carrier is willing to negotiate an agreement, and the public convenience and necessity permit abandonment, the Commission will issue a Certificate of Interim Trail Use or Abandonment by the 45th day after the application is filed.

(iii) In a protested but noninvestigated proceeding, when a timely trail use statement is filed, the initial decision determining that no investigation will be undertaken, which is issued within 45 days after the application is filed, will include a finding that either:

(A) The Trails Act is not applicable because of failure to comply with the provisions of § 1152.29(a); or

(B) The Trails Act is applicable, and directing the carrier to notify the Commission within 10 days about whether it intends to negotiate an agreement.

If the Trails Act is not applicable, or is applicable but the carrier either does not intend to negotiate an agreement, or does not timely notify the Commission of its intention to negotiate, a decision on the merits will be issued under § 1152.26(b)(1). If the carrier is willing to negotiate an agreement, and the public convenience and necessity permit abandonment, the Commission will issue a Certificate of Interim Trail Use or Abandonment by the 75th day after the application is filed.

(2) In exemption proceedings, a petition containing an interim trail use statement are due within 10 days after the date the Notice of Exemption is published in the FEDERAL REGISTER.

(3) If the regular abandonment or exemption request is investigated, comments will be accepted at any time during the time provided for making evidentiary filings in the investigation.

(4) In Conrail abandonment proceedings under NERSA, interim trail use statements are due within 60 days after the date that Conrail's abandonment application is filed.

(5) When an interim trail use comment(s) or petition(s) is filed, the railroad must submit a reply to the Commission within 10 days after the date the Commission issues a Notice of Findings in regular abandonment proceedings, and within 10 days after the date a petition requesting interim trail use is filed in an exemption or NERSA proceeding indicating whether and with whom it intends to negotiate an agreement.

(6) Late-filed trail use statements must be supported by a statement showing good cause for late filing.

(7) In proceedings where a Trails Act request is made, the Commission will determine whether the Trails Act is applicable.

(c) *Regular and NERSA abandonment proceedings* (1) If continued rail service does not occur pursuant to § 1152.27, and a railroad intends to enter into an interim trail use/rail banking agreement, then the Commission will issue a Certificate of Interim Trail Use or Abandonment (CITU) to the railroad and to the interim trail user for that portion of the right-of-way to be covered by the agreement. The CITU will: Permit the railroad to discontinue service, cancel tariffs, and salvage track and material consistent with interim trail use and rail banking, as long as it is consistent with any other Commission order, 30 days after the date it is issued (10 days after issuance in Conrail proceedings); and permit the railroad to fully abandon the line if no agreement is reached 180 days after it is issued, subject to appropriate conditions, including labor protection, and environmental matters.

(2) The CITU will indicate that interim trail use is subject to future restoration of rail service, and subject to the user continuing to meet the financial obligations for the right-of-way. The CITU will also indicate that, if the user intends to terminate trail use, it must send the Commission a copy of the CITU and request that it be vacated on a specified date. The Commission will reopen the abandonment proceeding, vacate the CITU, and issue an effective abandonment certificate for the involved portion of the right-of-way. Copies of the abandonment certificate will be sent to:

(i) The abandonment applicant;

(ii) The owner of the right-of-way; and

(iii) The current trail user.

(3) If an application to construct and operate a rail line over the right-of-way is authorized under 49 U.S.C. 10901 and 49 CFR Part 1150, or exempted under 49 U.S.C. 10505, then the CITU will be vacated accordingly.

(d) *Exempt abandonment proceedings.* (1) If a railroad intends to enter into an interim trail use/rail banking agreement, then the Commission will issue a Notice of Interim Trail Use or Abandonment (NITU) to the railroad and to the interim trail user for the portion of the right-of-way to be covered by the agreement. The NITU will permit the railroad to discontinue service, cancel tariffs, and salvage track and materials, consistent with interim trail use and rail banking, 30 days after the date it is issued, and permit the railroad to fully abandon the line if no agreement is reached 180 days after it is issued, subject to appropriate conditions, including labor protection, and environmental matters.

(2) The NITU will indicate that interim trail use is subject to future restoration of rail service, and subject to the user continuing to meet the financial obligations for the right-of-way. The NITU will also indicate that if the user intends to terminate trail use, it must send the Commission a copy of the NITU and request that it be vacated on a specific date. The Commission will reopen the exemption proceeding, vacate the NITU, and reissue a Notice of Exemption for that portion of the right-of-way. Copies of the reissued Notice of Exemption will be sent to:

(i) The abandonment exemption applicant;

(ii) The owner of the right-of-way; and

(iii) The trail user.

(3) If an application to construct and operate a rail line over the right-of-way is authorized under 49 U.S.C. 10901 and 49 CFR Part 1150, or exempted under 49 U.S.C. 10505, then the NITU will be vacated accordingly.

(e) Where late-filed trail use statements are accepted, the Director (or designee) will telephone the railroad to determine whether abandonment has been consummated and, if not, whether the railroad is willing to negotiate an interim trail use agreement. The railroad shall confirm, in writing, its response, within 5 days. If abandonment has been consummated, the trail use request will be dismissed. If abandonment has not been consummated but the railroad refuses to negotiate, then trail use will be denied. If abandonment has not been consummated and the railroad is willing to negotiate, the abandonment proceeding will be reopened, the certificate of abandonment decision granting an exemption or notice of exemption will be vacated, and an appropriate CITU or NITU will be issued. The effective date of the CITU or NITU will be the same date as the vacated certificate, decision, or notice.

(f) When a trail user intends to terminate trail use and another person intends to become a trail user by assuming financial responsibility for the right-of-way, then the existing and future trail users shall file, jointly:

(1) A copy of the extant CITU or NITU; and

(2) A Statement of Willingness to Assume Financial Responsibility by the new trail user.

The parties shall indicate the date on which responsibility for the right-of-way is to transfer to the new trail user. The Commission will reopen the abandonment or exemption proceeding, vacate the existing NITU or CITU; and issue an appropriate replacement NITU or CITU to the new trail user.

(g) In proceedings where a timely trail use statement is filed, but due to either the railroad's indication of its unwillingness to negotiate interim trail use agreement, or its failure to timely notify the Commission of its willingness to negotiate, a certificate of abandonment or an exemption notice or decision is issued instead of a CITU or NITU, and subsequently the railroad and trail use proponent nevertheless determine to negotiate an interim trail use agreement under the Trails Act, then the railroad and trail use proponent must file a joint pleading requesting that an appropriate CITU or NITU be issued. The Commission will reopen the proceeding, vacate the outstanding certificate, decision or notice (or portion thereof), and issue an appropriate CITU or NITU that will permit the parties to negotiate for a period agreed to by the parties in their joint filing, but not to exceed 180 days, at the end of which, the CITU or NITU will convert into a certificate, decision, or notice permitting abandonment.

[51 FR 16852, May 7, 1986, as amended at 52 FR 46774, Dec. 10, 1987]

Subpart D—Standards for Determining Costs, Revenues, and Return on Value

Source: 43 FR 7624, Feb. 24, 1978, unless otherwise noted. Redesignated at 47 FR 49581, Nov. 1, 1982.

§ 1152.30 General.

(a) *Contents of subpart.* (1) 49 U.S.C. 10905 directs the Commission to determine the extent to which the avoidable costs of providing rail service plus a reasonable return on the value of the line exceed the revenues attributable to the line. Section 205(e)(1)(B) of the Regional Rail Reorganization Act of 1973, as amended, directs the Office to publish standards for determining the "avoidable costs of providing rail freight service", as that phrase is used in section 10905. This subpart contains the methodology for such determinations and the standards necessary for application of those terms in the context of a particular proceeding. Such data will be used in reaching the Commission's findings on the merits of an abandonment of discontinuance proceeding and in making the necessary financial assistance determinations.

(2) This subpart also sets forth a method by which the carrier may establish its Forecast Year estimates and Estimated Subsidy Payment to be included in its application (§ 1152.22(d) of this part). Furthermore, an offeror of financial assistance may use this method to formulate a subsidy offer and/or Proposed Subsidy Payment under 49 U.S.C. 10905 and § 1152.27 of Subpart C of this part.

(b) *Data collection.* The owning or operating carrier shall establish a system to collect at branch level the data necessary to compute the base year data and the final subsidy payment. The collection and compilation of such data shall be in accordance with the Branch Line Accounting System (49 CFR Part 1201) established by the Office pursuant to section 205(e)(1)(a) of the Regional Rail Reorganization Act of 1973, as amended.

(c) *Final payment of financial assistance.* (1) When a financial assistance agreement is concluded and rail service continued thereunder, the final annual payment will be adjusted to reflect the actual revenues derived, avoidable costs incurred, and value of the properties used in the subsidy year.

(2) Where an adjustment results in an increase in the Estimated Subsidy Payment upon which the financial assistance agreement is based, the amount of such increase in excess of 15 percent of the estimated payment shall be treated as a carryover avoidable cost in the subsequent subsidy year. However, if the railroad notifies the subsidizer that the estimate will be exceeded by more than 15 percent in one of the Financial Status Reports (§ 1152.37) issued during the first ten months of the subsidy year or the increase results from an expense preapproved by the subsidizer, the adjusted amount shall be included in the final annual payment.

[41 FR 48520, Nov. 4, 1976, as amended at 43 FR 7625, Feb. 24, 1978. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 47 FR 49582, Nov. 1, 1982; 48 FR 54238, Dec. 1, 1983; 53 FR 49667, Dec. 9, 1988]

§ 1152.31 Revenue and income attributable to branch lines.

The revenue attributable to the rail properties is the total of the revenues assigned to the branch in accordance with this section, plus any subsidy payments that would cease upon discontinuance of service on the branch, for the subsidy year. The revenues assigned shall be derived from the following accounts:

(a) *Account 101-Freight.* The revenue assigned under this account shall be the actual revenues, including transit revenues, accruing to the railroad, derived from waybills and other source documents, for all traffic that:

(1) Originates or terminates on the branch;

(2) Originates or terminates on the branch and is handled off the branch on the system but not on another carrier; and

(3) Originates or terminates on the branch and is handled on another carrier.

All traffic that is received or forwarded through interchange at a point on the branch, including ferry operations, shall be considered as originating or terminating on the branch. The revenues of all other bridge or overhead traffic shall be attributed to the branch on the ratio of miles moved on the branch to miles moved on the system, provided, however, that the parties may agree on a mutually acceptable usage charge for bridge traffic in lieu of the mileage apportionment.

(b) *Account 104—Switching; Account 105—Water transfers; Account 106—Demurrage; Account 110—Incidental; Account 121—Joint Facility-Credit; Account 122—Joint Facility-Debt; Account 506—Revenues from Properties Used in Other Than Carrier Operations; Account 510—Miscellaneous Rent Income; Account 519—Miscellaneous Income.* The revenues assigned under these accounts shall be the actual revenues accruing to the railroad that are directly attributable to the branch.

(c) *Conversion Chart For Revenue Accounts*

Revenue account title	Previous account No.	Present account No.
Freight	101,109	101
Switching	110	104
Water transfers	113	105
Demurrage	137	106
Incidental	130, 132, 133, 135, 138, 139, 141, 142, 143	110
Joint facility-credit	151	121
Joint facility-debt	152	122
Revenues from property used in other than carrier operations, less expenses	502, 511	506, 534
Miscellaneous rent income	510	510
Miscellaneous income	519	519

§ 1152.32 Calculation of avoidable costs.

This section defines: Which cost elements are eligible for inclusion in the calculation of avoidable costs; the conditions under which certain cost elements become eligible for inclusion; and the basis of apportioning those cost elements which are not assigned to the branch on an actual expense basis. The avoidable costs of providing freight service on a branch shall be the total of the costs assigned to the branch in accordance with this section. The avoidable costs of providing freight service on a branch shall be just and reasonable, and shall not exceed those necessary for an honest and efficient operation. Those expenses apportioned under this section shall be derived from the latest Form R-1 or Form R-2 of the railroad filed with the ICC prior to the conclusion of the subsidy year, and assigned to the branch according to the procedures set forth in § 1152.33 of these regulations. When the term "Actual" is specified as the basis for assigning an expense, it shall mean that the only costs which can be assigned to the account are those costs which are incurred solely as a result of the continuation of rail freight service on the branch. The accounts in the following charts, which list only the "freight-only" account numbers, shall include the portion of common expenses that have been apportioned to freight service.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
(a) Maintenance of way and structures			
(1) Administration:			
Track			
Salaries and wages	201	11-13-02	Actual.
Materials		21-13-02	Do.
Purchased services		41-13-02	Do.
Other expenses		61-13-02	Do.
Bridges and buildings			
Salaries and wages	201	11-13-03	Do.
Materials		21-13-03	Do.
Purchased services		41-13-03	Do.
Other expenses		61-13-03	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Signals			
Salaries and wages	201	11-13-04	Do.
Materials		21-13-04	Do.
Purchased services		41-13-04	Do.
Other expenses		61-13-04	Do.
Communications			
Salaries and wages	201	11-13-05	Do.
Materials		21-13-05	Do.
Purchased services		41-13-05	Do.
Other expenses		61-13-05	Do.
Other			
Salaries and wages	201	11-13-06	Do.
Materials		21-13-06	Do.
Purchased services		41-13-06	Do.
Other expenses		61-13-06	Do.
(2) Repair maintenance and other roadway—running			
Salaries and wages	202	11-11-10	Do.
Materials		21-11-10	Do.
Repairs by others—DR		39-11-10	Do.
Repairs for others—CR		40-11-10	Do.
Purchased services		41-11-10	Do.
Other expenses		61-11-10	Do.
Roadway—switching			
Salaries and wages	202	11-12-10	Do.
Materials		21-12-10	Do.
Repairs by others—DR		39-12-10	Do.
Repairs for others—CR		40-12-10	Do.
Purchased services		41-12-10	Do.
Other expenses		61-12-10	Do.
Tunnels and subways—running			
Salaries and wages	206	11-11-11	Do.
Materials		21-11-11	Do.
Repairs by others—DR		39-11-11	Do.
Repairs for others—CR		40-11-11	Do.
Purchased services		41-11-11	Do.
Other expenses		61-11-11	Do.
Tunnels and subways—switching			
Salaries and wages	206	11-12-11	Do.
Materials		21-12-11	Do.
Repairs by others—DR		39-12-11	Do.
Repairs for others—CR		40-12-11	Do.
Purchased services		41-12-11	Do.
Other expenses		61-12-11	Do.
Bridges and culverts—running			
Salaries and wages	208-210	11-11-12	Do.
Materials		21-11-12	Do.
Repairs by others—DR		39-11-12	Do.
Repairs for others—CR		40-11-12	Do.
Purchased services		41-11-12	Do.
Other expenses		61-11-12	Do.
Bridges and culverts—switching			
Salaries and wages	208-210	11-12-12	Do.
Materials		21-12-12	Do.
Repairs by others—DR		39-12-12	Do.
Repairs for others—CR		40-12-12	Do.
Purchased services		41-12-12	Do.
Other expenses		61-12-12	Do.
Ties—running—material	212	21-11-13	Do.
Ties—switching—material	212	21-12-13	Do.
Rails—running—material	214	21-11-14	Do.
Rails—switching—material	214	21-12-14	Do.
Other track material—running—material	216	21-11-15	Do.
Other track material—switching—material	216	21-12-15	Do.
Ballast—running—material	218	21-11-16	Do.
Ballast—switching—material	218	21-12-16	Do.
Track laying and surfacing—running			
Salaries and wages	220	11-11-17	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Materials		21-11-17	Do.
Repairs by others—DR		39-11-17	Do.
Repairs for others—CR		40-11-17	Do.
Purchased services		41-11-17	Do.
Other expenses		61-11-17	Do.
Track laying and surfacing—switching			
Salaries and wages	220	11-12-17	Do.
Materials		21-12-17	Do.
Repairs by others—DR		39-12-17	Do.
Repairs for others—CR		40-12-17	Do.
Purchased services		41-12-17	Do.
Other expenses		61-12-17	Do.
Road property damaged—running			
Salaries and wages	202-220, 249	11-11-48	Do.
Materials		21-11-48	Do.
Repairs by others—DR		39-11-48	Do.
Repairs for others—CR		40-11-48	Do.
Purchased services		41-11-48	Do.
Other expenses		61-11-48	Do.
Road property damaged—switching			
Salaries and wages	202-220, 249	11-12-48	Do.
Materials		21-12-48	Do.
Repairs by others—DR		39-12-48	Do.
Repairs for others—CR		40-12-48	Do.
Purchased services		41-12-48	Do.
Other Expenses		61-12-48	Do.
Road property damaged—other			
Salaries and wages	221, 227-247	11-13-48	Do.
Materials	253, 257	21-13-48	Do.
Repairs by others—DR	265, 269	39-13-48	Do.
Repairs for others—CR		40-13-48	Do.
Purchased services		41-13-48	Do.
Other expenses		61-13-48	Do.
Signals and interlockers—running			
Salaries and wages	249	11-11-19	Do.
Materials		21-11-19	Do.
Repairs by others—DR		39-11-19	Do.
Repairs for others—CR		40-11-19	Do.
Purchased services		41-11-19	Do.
Other expenses		61-11-19	Do.
Signals and interlockers—switching			
Salaries and wages	249	11-12-19	Do.
Materials		21-12-19	Do.
Repairs by others—DR		39-12-19	Do.
Repairs for others—CR		40-12-19	Do.
Purchased services		41-12-19	Do.
Other expenses		61-12-19	Do.
Communications systems			
Salaries and wages	247	11-13-20	Do.
Materials		21-13-20	Do.
Repairs by others—DR		39-13-20	Do.
Repairs for others—CR		40-13-20	Do.
Purchased services		41-13-20	Do.
Other expenses		61-13-20	Do.
Electric power systems			
Salaries and wages	253, 257, 304	11-13-21	Do.
Materials		21-13-21	Do.
Repairs by others—DR		39-13-21	Do.
Repairs for others—CR		40-13-21	Do.
Purchased services		41-13-21	Do.
Other expenses		61-13-21	Do.
Highway grade crossings—running			
Salaries and wages	273	11-11-22	Do.
Materials		21-11-22	Do.
Repairs by others—DR		39-11-22	Do.
Repairs for others—CR		40-11-22	Do.
Purchased services		41-11-22	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Other expenses		61-11-22	Do.
Highway grade crossings—switching			
Salaries and wages	273	11-12-22	Do.
Materials		21-12-22	Do.
Repairs by others—DR		39-12-22	Do.
Repairs for others—CR		40-12-22	Do.
Purchased services		41-12-22	Do.
Other expenses		61-12-22	Do.
Station and office buildings			
Salaries and wages	227	11-13-23	Do.
Materials		21-13-23	Do.
Repairs by others—DR		39-13-23	Do.
Repairs for others—CR		40-13-23	Do.
Purchased services		41-13-23	Do.
Other expenses		61-13-23	Do.
Station buildings—locomotives			
Salaries and wages	235, 253 and 257	11-13-24	Do.
Materials		21-13-24	Do.
Repairs by others—DR		39-13-24	Do.
Repairs for others—CR		40-13-24	Do.
Purchased services		41-13-24	Do.
Other expenses		61-13-24	Do.
Shop buildings—freight cars			
Salaries and wages	235, 253 and 257	11-13-25	Do.
Materials		21-13-25	Do.
Repairs by others—DR		39-13-25	Do.
Repairs for others—CR		40-13-25	Do.
Purchased services		41-13-25	Do.
Other expenses		61-13-25	Do.
Shop buildings—other equipment			
Salaries and wages	235, 253 and 257	11-13-26	Do.
Materials		21-13-26	Do.
Repairs by others—DR		39-13-26	Do.
Repairs for others—CR		40-13-26	Do.
Purchased services		41-13-26	Do.
Other expenses		61-13-26	Do.
Locomotive servicing facilities			
Salaries and wages	231, 233	11-13-27	Do.
Materials		21-13-27	Do.
Repairs by others—DR		39-13-27	Do.
Repairs for others—CR		40-13-27	Do.
Purchased services		41-13-27	Do.
Other expenses		61-13-27	Do.
Miscellaneous buildings and structures			
Salaries and wages	221, 229, 239, 265, 304	11-13-28	Do.
Materials		21-13-28	Do.
Repairs by others—DR		39-13-28	Do.
Repairs for others—CR		40-13-28	Do.
Purchased services		41-13-28	Do.
Other expenses		61-13-28	Do.
Coal terminals			
Salaries and wages	243	11-13-29	Do.
Materials		21-13-29	Do.
Repairs by others—DR		39-13-29	Do.
Repairs for others—CR		40-13-29	Do.
Purchased services		41-13-29	Do.
Other expenses		61-13-29	Do.
Ore terminals			
Salaries and wages	243	11-13-30	Do.
Materials		21-13-30	Do.
Repairs by others—DR		39-13-30	Do.
Repairs for others—CR		40-13-30	Do.
Purchased services		41-13-30	Do.
Other expenses		61-13-30	Do.
TOFC/COFC terminals			
Salaries and wages	244	11-13-31	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Materials		21-13-31	Do.
Repairs by others—DR		39-13-31	Do.
Repairs for others—CR		40-13-31	Do.
Purchased services		41-13-21	Do.
Other expenses		61-13-31	Do.
Other marine terminals			
Salaries and wages	241	11-13-32	Do.
Materials		21-13-32	Do.
Repairs by others—DR		39-13-32	Do.
Repairs for others—CR		40-13-32	Do.
Purchased services		41-13-32	Do.
Other expenses		61-13-32	Do.
Motor vehicle loading and distribution facilities			
Salaries and wages	227	11-13-33	Do.
Materials		21-13-33	Do.
Repairs by others—DR		39-13-33	Do.
Repairs for others—CR		40-13-33	Do.
Purchased services		41-13-33	Do.
Other expenses		61-13-33	Do.
Facilities for other specialized service operations			
Salaries and wages	227, 237	11-13-35	Do.
Materials		21-13-35	Do.
Repairs by others—DR		39-13-35	Do.
Repairs for others—CR		40-13-35	Do.
Purchased services		41-13-35	Do
Other expenses		61-13-35	Do.
Roadway machines			
Salaries and wages	269	11-13-36	Daily repair costs per GMA, fo each type of machine usec on the branch line sec 1152.33(a)(1).
Materials		21-13-36	Do.
Repairs by others—DR		39-13-36	Do.
Repairs for others—CR		40-13-36	Do.
Purchased services		41-13-36	Do.
Other expenses		61-13-36	Do.
Small tools and supplies			
Salaries and wages			
Materials			
Repairs by others—DR			
Repairs for others—CR			
Purchased services			
Other expenses	271	11-13-37	Assign supplies on the da costs per GMA, for each typ of machine used on th branch; small tool assign maintenance of way 11-1 12-10 through 17, and 4 sec. 1152.33(a)(2).
Materials		21-13-37	Do.
Repairs by others—DR		39-13-37	Do.
Repairs for others—CR		40-13-37	Do.
Purchased services		41-13-37	Do.
Other expenses		61-13-37	Do.
Snow removal			
Salaries and wages	272	11-13-38	Actual.
		21-13-38	Do.
		39-13-38	Do.
		40-13-38	Do.
		41-13-38	Do.
		61-13-38	Do.
Fringe benefits—running	277, 457	12-11-00	11-11-XX, sec. 1152.33(a)(3
Fringe benefits—switching	277, 457	12-12-00	11-12-XX, sec. 1152.33(a)(3)
Fringe benefits—other	277, 457	12-13-00	11-13-XX, s 1152.33(a)(3)(iii).
Casualties and insurance—running			
Other casualties	274	52-11-00	Actual.
Insurance	275	53-11-00	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Casualties and insurance—switching			
Other casualties	274	52-12-00	Do.
Insurance	275	53-12-00	Do.
Lease rentals—debit—running	542	31-11-00	Do.
Lease rentals—debit—switching	542	31-12-00	Do.
Lease rentals—debit—other	542	31-13-00	Do.
Lease rentals—credit—running	509	32-11-00	Do.
Lease rentals—credit—switching	509	32-12-00	Do.
Lease rentals—credit—other	509	32-13-00	Do.
Joint facility rent—debit—running	541	33-11-00	Do.
Joint facility rent—debit—switching	541	33-12-00	Do.
Casualties and insurance—other			
Other casualties	274, 420	52-13-00	Do.
Insurance	275	53-13-00	Do.
Joint facility—debit—other	541	33-13-00	Do.
Joint facility rent—credit—running	508	34-11-00	Do.
Joint facility rent—credit—switching	508	34-12-00	Do.
Joint facility rent—credit—other	508	34-13-00	Do.
Other rents—debit—running	543	35-11-00	Do.
Other rents—debit—switching	543	35-12-00	Do.
Other rents—debit—other	543	35-13-00	Do.
Other rents—credit—running	510	36-11-00	Do.
Other rents—credit—switching	510	36-12-00	Do.
Other rents—credit—other	510	36-13-00	Do.
Depreciation—running	266	62-11-00	Do.
Depreciation—switching	266	62-12-00	Do.
Depreciation—other	266, 305	62-13-00	Do.
Joint facility—debit—running	278	37-11-00	Do.
Joint facility—debit—switching	278	37-12-00	Do.
Joint facility—debit—other	278	37-13-00	Do.
Joint facility—credit—running	279	38-11-00	Do.
Joint facility—credit—switching	279	38-12-00	Do.
Joint facility—credit—other	279	38-13-00	Do.
Dismantling retired road property—running			
Salaries and wages	270	11-11-39	Do.
Materials		21-11-39	Do.
Purchased services		41-11-39	Do.
Other expenses		61-11-39	Do.
Dismantling retired road property—switching			
Salaries and wages	270	11-12-39	Do.
Materials		21-12-39	Do.
Purchased services		41-12-39	Do.
Other expenses		61-12-39	Do.
Dismantling retired road property—other			
Salaries and wages	270, 306	11-13-39	Do.
Materials		21-13-39	Do.
Purchased services		41-13-39	Do.
Other expenses		61-13-39	Do.
Other—running			
Salaries and wages	281-282, 274	11-11-99	Do.
Materials		21-11-99	Do.
Purchased services		41-11-99	Do.
Other expenses		61-11-99	Do.
Other—switching			
Salaries and wages	281-282, 274	11-12-99	Do.
Materials		21-12-99	Do.
Purchased Services		41-12-99	Do.
Other Expenses		61-12-99	Do.
Other—other			
Salaries and wages	281-282, 274	11-13-99	Do.
Materials		21-13-99	Do.
Purchased services		41-13-99	Do.
Other expenses		61-13-99	Do.
(b) Maintenance of equipment			
(1) Locomotives:			
Administration			
Salaries and wages	301	11-21-01	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Materials		21-21-01	Do.
Purchased services		41-21-01	Do.
Other expenses		61-21-01	Do.
Repairs and maintenance			
Salaries and wages	311	11-21-41	Road diesel and road electric locomotive gross ton miles. Yard diesel and yard electric locomotive unit hours, §1152.33(b)(1).
Materials		21-21-41	Do.
Repairs by others—DR		39-21-41	Do.
Repairs for others—CR		40-21-41	Do.
Purchased services		41-21-41	Do.
Other expenses		61-21-41	Do.
Machinery repair			
Salaries and wages	302	11-21-40	Actual.
Materials		21-21-40	Do.
Repairs by others—DR		39-21-40	Do.
Repairs for others—CR		40-21-40	Do.
Purchased services		41-21-40	Do.
Other expenses		61-21-40	Do.
Equipment damaged			
Salaries and wages	311	11-21-48	Do.
Materials		21-21-48	Do.
Repairs by others—DR		39-21-48	Do.
Repairs for others—CR		40-21-48	Do.
Purchased services		41-21-48	Do.
Other expenses		61-21-48	Do.
Equipment damaged			
Fringe benefits	335, 457	12-21-00	11-21-XX, sec. 1152.33(b)(3)(i).
Other casualties and insurance			
Other casualties	332	52-21-00	Actual.
Insurance	333	53-21-00	Do.
Lease rentals—debit	537	31-21-00	Do.
Lease rentals—credit	504	32-21-00	Do.
Joint facility rent—debit	541	33-21-00	Do.
Joint facility rent—credit	508	34-21-00	Do.
Other rents—debit	537	35-21-00	Do.
Other rents—credit	504	36-21-00	Do.
Joint facility—debit	336	37-21-00	Do.
Joint facility—credit	337	38-21-00	Do.
Depreciation	331, 305	62-21-00	All locomotives, locomotive unit hours, sec. 1152.33(b)(2).
Dismantling retired property			
Salaries and wages	306, 329	11-21-39	Actual.
Materials		21-21-39	Do.
Purchased services		41-21-39	Do.
Other expenses		61-21-39	Do.
Other			
Salaries and wages	339, 332	11-21-99	Do.
Materials	339	21-21-99	Do.
Purchased services	339	41-21-99	Do.
Other expenses	339, 332	61-21-99	Do.
(2) Freight cars:			
Administration			
Salaries and wages	301	11-22-01	Do.
Materials		21-22-01	Do.
Purchased services		41-22-01	Do.
Other expenses		61-22-01	Do.
Machinery repair			
Salaries and wages	302	11-22-40	Do.
Materials		21-22-40	Do.
Repairs by others—DR		39-22-40	Do.
Repairs for others—CR		40-22-40	Do.
Purchased services		41-22-40	Do.
Other expenses		61-22-40	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Equipment damage			
Salaries and wages	314	11-22-48	Do.
Materials		21-22-48	Do.
Repairs by others—DR		39-22-48	Do.
Repairs for others—CR		40-22-48	Do.
Purchased services		41-22-48	Do.
Other expenses		61-22-48	Do.
Fringe benefits	335, 457	12-22-00	11-22-XX, sec. 1152.33-(b)(3)(iii).
Other casualties and insurance			
Other casualties	332	52-22-00	Actual.
Insurance	333	53-22-00	Do.
Joint facility rent—DR	541	33-22-00	Do.
Joint facility rent—CR	506	34-22-00	Do.
Joint facility—DR	336	37-22-00	Do.
Joint facility—CR	337	38-22-00	Do.
Dismantling retired property			
Salaries and wages	306, 329	11-22-39	Do.
Materials		21-22-39	Do.
Purchased services		41-22-39	Do.
Other expenses		61-22-39	Do.
Other			
Salaries and wages	330, 339, 332	11-22-99	Do.
Materials		21-22-99	Do.
Purchased services		41-22-99	Do.
Other expenses		61-22-99	Do.
Freight car costs per day and per mile:			
Repair and maintenance			
Salaries and wages	314	11-22-42	These accounts are used to develop the cost per car day and per car mile for each type of car, sec. 1152.32(g).
Materials		21-22-42	Do.
Repairs by others—DR		39-22-42	Do.
Repairs for others—CR		40-22-42	Do.
Purchased services		41-22-42	Do.
Other expenses		61-22-42	Do.
Lease rentals—DR	536	31-22-00	
Lease rentals—CR	503	32-22-00	
Depreciation	331, 305	62-22-00	
Other rents—DR	536	35-22-00	
Other rents—CR	503	36-22-00	
(3) Other equipment:			
Administration			
Salaries and wages	301	11-23-01	Actual.
Materials		21-23-01	Do.
Purchased services		41-23-01	Do.
Other expenses		61-23-01	Do.
Repair and maintenance:			
Trucks, trailers and containers—revenue service			
Salaries and wages	318	11-23-43	Do.
Materials		21-23-43	Do.
Repairs by others—DR		39-23-43	Do.
Repairs for others—CR		40-23-43	Do.
Purchased services		41-23-43	Do.
Other expenses		61-23-43	Do.
Floating equipment—revenue service			
Salaries and wages	323	11-23-44	Do.
Materials		21-23-44	Do.
Repairs by others—DR		39-23-44	Do.
Repairs for others—CR		40-23-44	Do.
Purchased services		41-23-44	Do.
Other expenses		61-23-44	Do.
Computer and data processing			
Salaries and wages	(1)	11-23-46	Do.
Materials		21-23-46	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Repairs by others—DR		39-23-46	Do.
Repairs for others—CR		40-23-46	Do.
Purchased services		41-23-46	Do.
Other expenses		61-23-46	Do.
Machinery			
Salaries and wages	302	11-23-40	Do.
materials		21-23-40	Do.
Repairs by others—DR		39-23-40	Do.
Repairs for others—CR		40-23-40	Do.
Purchased services		41-23-40	Do.
Other expenses		61-23-40	Do.
Work and other non revenue equipment			
Salaries and wages	326, 328	11-23-47	Do.
Materials		21-23-47	Do.
Repairs by others—DR		39-23-47	Do.
Repairs for others—CR		40-23-47	Do.
Purchased services		41-23-47	Do.
Other expenses		61-23-47	Do.
Equipment damaged			
Salaries and wages	318, 323, 326, 328	11-23-48	Do.
Materials		21-23-48	Do.
Repairs by others—DR		39-23-48	Do.
Repairs for others—CR		40-23-38	Do.
Purchased services		41-23-48	Do.
Other expenses		61-23-48	Do.
Equipment damaged			
Fringe benefits	335, 457	12-23-00	11-23-XX, sec. 1152.33(b)(3)(ii).
Other casualties and insurance			
Other casualties	332	52-23-00	Actual.
Insurance	333	53-23-00	Do.
Lease rentals—DR	539, 540	31-23-00	Do.
Lease rentals—CR	506, 507	32-23-00	Do.
Joint facility rent—DR	541	33-23-00	Do.
Joint facility rent—CR	506	34-23-00	Do.
Other rents—DR	539, 540	35-23-00	Do.
Other rents—CR	506, 507	36-23-00	Do.
Depreciation	331, 305	62-23-00	Do.
Joint facility—DR	336	37-23-00	Do.
Joint facility—CR	337	38-23-00	Do.
Dismantling retired property			
Salaries and wages	306, 329	11-23-39	Do.
Materials		21-23-39	Do.
Purchased services		41-23-39	Do.
Other expenses		61-23-39	Do.
Other			
Salaries and wages	339, 332	11-23-99	Do.
Materials	339	21-23-99	Do.
Purchased services	339	41-23-99	Do.
Other expenses	339, 332	61-23-99	Do.
(c) Transportation			
(1) Train operations:			
Administration			
Salaries and wages	371	11-31-01	Do.
Materials		21-31-01	Do.
Purchased services		41-31-01	Do.
Other expenses		61-31-01	Do.
Engine crews			
Salaries and wages	392	11-31-56	Do.
Materials	402	21-31-56	Train hours, sec. 1152.33(c)(1)(i).
Purchased services	402	41-31-56	Actual.
Other expenses	402	61-31-56	Do.
Train crews			
Salaries and wages	401	11-31-57	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Materials	402	21-31-57	Trains hours, sec. 1152.33(c)(1)(i).
Purchased services	402	41-31-57	Actual.
Other expenses	402	61-31-57	Do.
Dispatching trains			
Salaries and wages	372	11-31-58	Do.
Materials		21-31-58	Do.
Purchased services		41-31-58	Do.
Other expenses		61-31-58	Do.
Operating signals and interlockers			
Salaries and wages	404	11-31-59	Do.
Materials		21-31-59	Do.
Purchased services		41-31-59	Do.
Other expenses		61-31-59	Do.
Operating drawbridges			
Salaries and wages	406	11-31-60	Do.
Materials		21-31-60	Do.
Purchased services		41-31-60	Do.
Other expenses		61-31-60	Do.
Highway crossing protection			
Salaries and wages	405	11-31-61	Do.
Materials		21-31-61	Do.
Purchased services		41-31-61	Do.
Other expenses		61-31-61	Do.
Train and inspection and lubrication			
Salaries and wages	314, 402, 311	11-31-62	Train hours, Sec. 1152.33(c)(1)(i).
Materials		21-31-62	Do.
Purchased services		41-31-62	Actual.
Other expenses		61-31-62	Do.
Locomotive fuel			
Salaries and wages			
Materials			
Purchased services			
Other expenses	394	11-31-671-31-6741-31-6761-31-67	Diesel locomotive unit hours, Sec. 1152.33(c)(1)(ii).
Electric power purchased or produced for motive power			
Salaries and wages	395, 445	11-31-68	Electric locomotive unit hours, sec. 1152.33(c)(1)(iii).
Materials	395, 445	21-31-68	Do
Purchased services	395, 396, 445	41-31-68	Do
Other expenses	395, 445	61-31-68	Do.
Servicing locomotives			
Salaries and wages	400	11-31-69	Locomotive unit miles, sec. 1152.33(c)(1)(iv).
Materials		21-31-69	Do.
Purchased services		41-31-69	Do.
Other expenses		61-31-69	Do.
Freight lost or damaged—solely related	418, 419	51-31-00	Actual.
Clearing wrecks			
Salaries and wages	415	11-31-63	Do.
Materials		21-31-63	Do.
Purchased services		41-31-63	Do.
Other expenses		61-31-63	Do.
Fringe benefits	409, 457	12-31-00	11-31-XX, sec. 1152.33(c)(4)(i).
Other casualties and insurance			
Other casualties	416, 417, 420	52-31-00	Actual.
Insurance	414	53-31-00	Do.
Joint facility—DR	412	37-31-00	Do.
Joint facility—CR	413	38-31-00	Do.
Other			
Salaries and wages	402, 411, 420	11-31-99	Do.
Materials		21-31-99	Do.
Purchased services		41-31-99	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Other expenses		61-31-99	Do.
(2) Yard operations:			
Administration			
Salaries and wages	371	11-32-01	Do.
Materials		21-32-01	Do.
Purchased services		41-32-01	Do.
Other expenses		61-32-01	Do.
Switch crews			
Salaries and wages	378, 380	11-32-64	Do.
Materials	389	21-32-64	Locomotive unit hours, sec. 1152.33(c)(2)(i)
Purchased services	389	41-32-64	Actual.
Other expenses	389	61-32-64	Do.
Controlling operations			
Salaries and wages	377	11-32-65	Do.
Materials	389	21-32-65	Do.
Purchased services	389	41-32-65	Do
Other expenses	389	61-32-65	Do.
Yard and terminal clerical			
Salaries and wages	377	11-32-66	Actual.
Materials	389	21-32-66	Do.
Purchased services	389	41-32-66	Do.
Other expenses	389	61-32-66	Do.
Operating switches, signals, retarders and humps			
Salaries and wages	379	11-32-59	Do.
Materials	389	21-32-59	Do.
Purchased services	389	41-32-59	Do.
Other expenses	389	61-32-59	Do.
Locomotive fuel			
Salaries and wages	382	11-32-67	Diesel locomotive unit hours, sec. 1152.33(c)(2)(ii)
Materials		21-32-67	Do.
Purchased services		41-32-67	Do.
Other expenses		61-32-67	Do.
Electric power purchased or produced for motive power			
Salaries and wages	383, 445	11-32-68	Electric locomotive unit hours, sec. 1152.33(c)(2)(iii).
Materials	383, 445	21-32-68	Do.
Purchased services	383, 384, 445	41-32-68	Do.
Other expenses	383, 445	61-32-68	Do.
Servicing locomotives			
Salaries and wages	388	11-32-69	Locomotive unit hours, sec. 1152.33(c)(2)(i).
Materials		21-32-69	Do.
Purchased services		41-32-69	Do.
Other expenses		61-32-69	Do.
Freight lost or damaged—solely related	418, 419	51-32-00	Actual.
Clearing wrecks			
Salaries and wages	415	11-32-63	Do.
Materials		21-32-63	Do.
Purchased services		41-32-63	Do.
Other expenses		61-32-63	Do.
Fringe benefits	409, 457	12-32-00	11-32-XX, sec. 1152.33-(c)(4)(ii).
Other casualties and insurance			
Other casualties	416, 420	52-32-00	Actual.
Insurance	414	53-32-00	Do.
Joint facility—DR	390, 412	37-32-00	Do.
Joint facility—CR	391, 413	38-32-00	Do.
Other			
Salaries and wages	411, 420	11-32-99	Do.
Materials		21-32-99	Do.
Purchased services		41-32-99	Do.
Other expenses		61-32-99	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
(3) Train and yard operations common:			
Cleaning car interiors			
Salaries and wages	402	11-33-70	Do.
Materials		21-33-70	Do.
Purchased services		41-33-70	Do.
Adjusting and transferring loads			
Salaries and wages	373, 402	11-33-71	Do.
Materials	376, 402	21-33-71	Do.
Purchased services	376, 402	41-33-71	Do.
Carloading devices and grain doors			
Salaries and wages	402	11-33-72	Do.
Materials		21-33-72	Do.
Purchased services		41-33-72	Do.
Freight lost or damaged—all other	418, 419	51-33-00	Do.
Fringe benefits	409	12-33-00	11-33-XX, sec. 1152.33(c)(4)(iii).
(4) Specialized service operations:			
Administration			
Salaries and wages	371, 408, 443	11-34-01	Actual.
Materials		21-34-01	Do.
Purchased services		41-34-01	Do.
Other expenses		61-34-01	Do.
Pick-up and delivery, marine line haul, and rail substitute service			
Salaries and wages	408, 421, 422	11-34-73	Do.
Materials		21-34-73	Do.
Purchased services		41-34-73	Do.
Other expenses		61-34-73	Do.
Loading and unloading and local marine			
Salaries and wages	375, 408, 421	11-34-74	Do.
Materials	422 and 443	21-34-74	Do.
Purchased services		41-34-74	Do.
Other expenses		61-34-74	Do.
Protective services			
Salaries and wages	402, 421, 422, 443	11-34-75	Do.
Materials		21-34-75	Do.
Purchased services		41-34-75	Do.
Other expenses		61-34-75	Do.
Freight lost or damaged—Solely related	418, 419	51-34-00	Do.
Fringe benefits	409, 457, 449	12—34-00	11-34-XX, sec. 1152.33-(c)(4)(iv).
Casualties and insurance			
Other casualties	416, 420	52-34-00	Actual.
Insurance	414	53-34-00	Do.
Joint facility—DR	412, 447	37-34-00	Do.
Joint facility—CR	413, 448	38-34-00	Do.
Other			
Salaries and wages	411, 442, 446, 420	11-34-99	Do.
Materials		21-34-99	Do.
Purchased services		41-34-99	Do.
Other expenses		61-34-99	Do.
(5) Administrative support operations:			
Administration			
Salaries and wages	371	11-35-01	Do.
Materials		21-35-01	Do.
Purchased services		41-35-01	Do.
Other expenses		61-35-01	Do.
Employees performing clerical and accounting functions			
Salaries and wages	373	11-35-76	Do.
Materials	376	21-35-76	Do.
Purchased services	376	41-35-76	Do.
Other expenses	376	61-35-76	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Communication systems operation			
Salaries and wages	373, 407	11-35-77	Do.
Materials	376, 407	21-35-77	Do.
Purchased services	376, 407	41-35-77	Do.
Other expenses	376, 407	61-35-77	Do.
Loss and damage claims processing			
Salaries and wages	418, 419	11-35-78	Number of claims, sec. 1152.33(c)(3)(i).
Materials		21-35-78	Do.
Purchased services		41-35-78	Do.
Other expenses		61-35-78	Do.
Fringe benefits	409, 457	12-35-00	11-35-XX. sec. 1152.33-(c)(4)(v).
Joint facility—DR	412, 447	37-35-00	Actual.
Joint facility—CR	413, 448	38-35-00	Do.
Casualties and insurance			
Other casualties	416, 420	52-35-00	Do.
Insurance	414	53-35-00	Do.
Other			
Salaries and wages	411, 420	11-35-99	Do.
Materials	411	21-35-99	Do.
Purchased services	411	41-35-99	Do.
Other expenses	411, 420	61-35-99	Do.
(d) General Administrative			
Officers—general administration			
Salaries and wages	351, 451, 452	11-61-01	Do.
Materials		21-61-01	Do.
Purchased services		41-61-01	Do.
Other expenses		61-61-01	Do.
Accounting, auditing and finance			
Salaries and wages	452, 451	11-61-86	Do.
Materials		21-61-86	Do.
Purchased services		41-61-86	Do.
Other expenses		61-61-86	Do.
Management services and data processing			
Salaries and wages	452, 451	11-61-87	Do.
Materials		21-61-87	Do.
Purchased services		41-61-87	Do.
Other expenses		61-61-87	Do.
Marketing			
Salaries and wages	352	11-61-88	Do.
Materials		21-61-88	Do.
Purchased services		41-61-88	Do.
Other expenses		61-61-88	Do.
Sales			
Salaries and wages	352	11-61-89	Do.
Materials		21-61-89	Do.
Purchased services		41-61-89	Do.
Other expenses		61-61-89	Do.
Industrial development			
Salaries and wages	356, 452, 451	11-61-90	Do.
Materials		21-61-90	Do.
Purchased services		41-61-90	Do.
Other expenses		61-61-90	Do.
Personnel and labor relations			
Salaries and wages	452, 451	11-61-91	Do.
Materials		21-61-91	Do.
Purchased services		41-61-91	Do.
Other expenses		61-61-91	Do.
Legal and secretarial			
Salaries and wages	452, 454, 274 332 and 420	11-61-92	Do.
Materials		21-61-92	Do.
Purchased services		41-61-92	Do.
Other expenses		61-61-92	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Public relations and advertising			
Salaries and wages	353, 354	11-61-93	Do.
Materials		21-61-93	Do.
Purchased services		41-61-93	Do.
Other expenses		61-61-93	Do.
Research and development			
Salaries and wages	(1)	11-61-94	Do.
Materials		21-61-94	Do.
Purchased services		41-61-94	Do.
Other expenses		61-61-94	Do.
Fringe benefits	359, 456, 457	12-61-00	11-61-XX, sec. 1152.33(d)(1).
Casualties and insurance			
Other casualties	None	52-61-00	Actual
Insurance	357, 455	53-61-00	Do.
Writedown of uncollectible accounts	706, 707	63-61-00	Do.
Other taxes except on corporate income or payroll	532	65-61-00	Do.
Joint facility—DR	461	37-61-00	Do.
Joint facility—CR	462	38-61-00	Do.
Other			
Salaries and wages	355, 360, 460	11-61-99	Do.
Materials	351, 451, 452	21-61-99	Do.
Purchased services	and 453	41-61-99	Do.
Other expenses		61-61-99	Do.

[1] Various accounts.

(e) *Deadheading, taxi, and hotel costs.* The costs assigned under this subsection shall be the actual costs incurred as a result of providing service to the branch line for deadheading, taxi, and hotel costs. The amounts included under this subsection shall not be included under other subsections of these regulations.

(f) *Overhead movement costs.* The costs assigned under this subsection shall be the actual costs incurred in moving overhead in order to provide service to the branch. The amounts shown under this subsection shall not be included under other subsections of these regulations.

(g) *Freight car costs.* For Class I railroads, the on-segment costs for time-mileage freight cars shall be calculated on the basis of the carrier's average cost per day and per mile. Those freight cars that are rented on a straight mileage basis are to be costed on the carrier's average cost per mile for each type of car rented on this basis. No costs are to be included in the calculation for private line (shipper owned) or other cars for which the railroad does not make payments. The cost per day and per mile shall be calculated separately for each type of car specified in Ex Parte No. 334, *Car Service Compensation—Basic Per Diem Charges,* 362 I.C.C. 884 (1980). The freight car costs shall be seperated between "return on value-freight cars" and "freight car costs other than return on freight cars". The costs assigned to a line under this subsection are to be derived from the accounts listed below.

Operating expense group—Repair and maintenance	Account No.
Salaries and wages	11-22-42
Materials	21-22-42
Repairs by others—DR	39-22-42
Repairs for others—CR	40-22-42
Purchased services	41-22-42
Other expenses	61-22-42
Lease rentals—DR	31-22-00
Lease rentals—CR	32-22-00
Depreciation	
Other rents—DR	35-22-00
Other rents—CR	36-22-00

The system total of the repair and maintenance accounts, all accounts designated XX-XX-42, and depreciation shall be divided into time-related costs and mileage-related costs on the basis of the present "Rail Form A" apportionment factors (i.e., 50 percent time and 50 percent mileage for repairs, and 60 percent time and 40 percent mileage for depreciation). Freight car costs shall not include depreciation as determined in Account No. 62-22-

00. Freight car depreciation shall be calculated in the manner set forth in paragraph (g)(3)(i) of this section. The system total receipts and payments for the hire of time-mileage cars, and the basic data used in the development of the car-day and car-mile factors, shall be taken from the carrier's latest Form R-1 and company records. The specific steps to complete the calculation are as follows:

(1) The total system car days by car type shall be calculated by: (i) Averaging the carrier's freight car ownership at the beginning and end of the year (Form R-1, schedule 710, columns (b) and (k); (ii) multiplying the average by the standard active number of car days (346) as developed in ICC Docket No. 31358; (iii) subtracting car days on foreign lines (source: Company records); and (iv) adding the foreign car days on home line (source: Company records). This procedure shall be followed for each car type specified in Ex Parte No. 334, *supra*.

(2) The total railroad car miles shall be calculated by adding the loaded car miles for the railroad owned and leased cars (R-1, Schedule 755) to empty car miles for the railroad owned or leased cars (R-1, Schedule 755). The total car miles, loaded and empty, shall be calculated for each car type specified in Ex Parte No. 334, *supra*.

(3) The cost per car day shall be calculated for each type of time-mileage car by adding 50 percent of total freight car repair costs for each type (Form R-1, schedule 415, column (b)), and 60 percent of the depreciation shall be developed as follows:

(i) The current value for each type of car shall be calculated by first arriving at the current cost per car using the most recent purchase of this type by the railroad indexed to the midpoint of the year or a price quote from the manufacturer. This unit price shall be applied to the average number of this type of car owned by the carrier during the year. The current value developed for each car type is then multiplied by the composite depreciation rate for that type of car as shown in the latest annual report filed with the Commission or company records.

(ii) Add 100 percent of the return on investment. Return on investment shall be determined by multiplying the current value of each type of car, developed in paragraph (g)(3)(i) of this section, by 1 minus the ratio of accumulated depreciation to the total original cost investment. This will determine the net current value for each type of car. The net current value for each type of car shall then be multiplied by the nominal rate of return calculated in § 1152.34(d) to obtain nominal return on investment for each type of car. The total return on investment shall then be calculated by deducting the projected holding gain (loss) for the forecast and/or subsidy year from the nominal return on investment for each type of car. The total return on investment for each type of car shall then be divided by total car-days for each car-type developed in paragraph (g)(1) of this section.

(iii) To the amounts for repairs and depreciation, and add the time portion of the railroad's payment for hire of time-mileage freight cars (Form R-1, schedule 414, column (g)), and subtract the time portion of the railroad's receipts for hire of time mileage freight cars (Form R-1, schedule 414, column (d)). The total of these costs is divided by the total car days for each type developed in paragraph (g)(1) of this section.

(4) The cost per mile shall be calculated for each type of time-mileage car as follows. First, add: (i) 50 percent of the total freight train car repair cost for each car type (Form R-1, schedule 415, column (b)); (ii) 40 percent of the total depreciation costs for each car type developed in paragraph (g)(3)(i) of this section; and (iii) the mileage portion of the carrier's payments for the hire of time-mileage freight cars (Form R-1, schedule 414, column (f)). Then, subtract the mileage portion of the carrier's receipts for hire of time-mileage freight cars (Form R-1, schedule 414, column (c)). Finally, divide the result by the total car-miles for each car-type developed in paragraph (g)(2) of this section.

(5) The costs per car day and per car mile developed in paragraphs (g)(3) and (4) of this section shall be applied to the total car days and total car miles for each car type accumulated

on the line segment for all traffic originated and/or terminated on the segment plus those freight cars that bridge the line segment which are attributed to time-mileage freight train cars. The on-segment costs for freight cars rented on a straight mileage basis shall be the railroad's total payments for mileage cars (Form R-1, schedule 414, column (e)), for each car type divided by the total miles on which the charges were based.

(6) For Class II and III railroads, the on-segment costs for time-mileage and straight mileage freight cars shall be calculated in the same manner prescribed for Class I railroads, using the latest data available.

(h) *Return on investment—locomotive (line).* The return on investment shall be calculated for each type of classification of locomotive that is actually used to provide service to the line segment. The return for the locomotive(s) used shall be calculated in accordance with the following procedure:

(1) The current replacement cost for each type of locomotive used to serve the line segment shall be based on the most recent purchase of that particular type and size locomotive by the carrier, indexed to the midpoint of the subsidy year, or an amount quoted by the manufacturer. The amount must be substantiated. This unit cost shall be multiplied by 1 minus the ratio of total accumulated depreciation to original total cost of that type of equipment owned by applicant-carrier, as shown by company records.

(2) The current nominal cost of capital shall be used in the calculation of return on investment for locomotives shall be calculated as provided in § 1152.34(d).

(3) The return on investment for each category or type of locomotive shall be the nominal return less the holding gain (loss). The nominal return is calculated by multiplying the replacement cost determined in paragraph (h)(1) of this section by the nominal rate of return determined in paragraph (h)(2) of this section. The holding gain (loss) shall be gain (loss) projected to occur during the forecast and/or subsidy year.

(4) The return on investment for each type of locomotive shall be assigned to the line segment on a ratio of the locomotive unit hours on the segment to average locomotive unit hours per unit for each type of locomotive in the system. This ratio will be developed as follows:

(i) The carrier shall keep and maintain records of the number of hours that each type of locomotive incurred in serving the segment during the subsidy period.

(ii) The railroad shall develop the system average locomotive unit hours per unit for each of the following types of locomotives; yard diesel; yard-other; road diesel; and road-other.

(iii) The ratio applied to the return on investment is calculated by dividing the hours that each type or class of locomotive is used to serve the segment, as developed in paragraph (h)(4)(i) of this section, by the system average locomotive unit hours per unit for the applicable type developed in paragraph (h)(4)(ii) of this section.

(5) The cost assigned to the segment for each type of locomotive shall be calculated by multipying the annual return on investment developed in paragraph (h)(3) of this section by the ratio(s) developed in paragraph (h)(4) of this section.

(i) *Revenue taxes.* The amount of revenue taxes shall be computed based on the amounts directly paid in those States that subject the railroad to a revenue tax.

(j) *Property taxes (Line).* (1) The assigned costs under this subsection shall be the net systemwide property tax savings resulting from the abandonment, calculated as set out below, if the applicant-carrier intends subsequently to sell or otherwise dispose of the abandoned properties. If the applicant-carrier expresses an intent to dispose of the properties, it will be presumed that the properties will ultimately be sold or otherwise disposed of after abandonment. Protestants may rebut this presumption by showing that it would be financially beneficial to retain ownership of the property for investment purposes.

(2) In States where a true *ad valorem* tax is levied on real property (such as track, land, buildings, and

other facilities), applicant must affirm that the *ad valorem* method applies and must substantiate the amount of property taxes levied against the property on the line segment.

(3) In States where the *ad valorem* method is not employed, applicant must describe the applicable property tax methodology if it is claiming the local property tax as an avoidable cost of operations. Additionally, it must substantiate with evidence and computations the actual Statewide tax savings attributable to the abandonment.

(4) Any property tax properly substantiated under paragraphs (f)(2) or (3) of this section shall be presumed to represent systemwide savings to the carrier. Protestants may rebut this presumption by presenting evidence: (i) That property taxes in those States where the carrier operates that are not involved in the abandonment will increase significantly because of reassessments attributable to the abandonment; or (ii) that a significantly higher property tax will be levied against a retained portion of the abandoned property. If applicant does not refute protestant's evidence, it may claim avoidable property taxes only if, and to the extent, it proves systemwide property tax savings.

(5) In States where real property taxes are assessed and levied against the owner of the property but the tax on rolling stock is assessed to the railroad operating the service on the basis of a formula of a State-wide valuation of property, the tax on rolling stock attributable to each line segment shall be determined as follows:

(i) Using ratio of the cost of equipment (as used in the formula) to the total of all property costs (as used in formula);

(ii) Apply that ratio to the total State assessment to determine the portion of the assessment attributable to rolling stock;

(iii) Allocate the rolling stock assessment thus determined to each line segment on the basis of car and locomotive unit miles on the segment to total car and locomotive unit miles in the State; and

(iv) Apply the appropriate tax rate or rates to the allocated assessment thus determined.

(k) *Administrative costs.* The costs assigned under this account shall be the actual costs directly attributable to the administration of the subsidy program or at the option of the carrier, one percent of the total annual revenues attributed to the branch shall be allowable to cover all costs of administering the subsidy program. Either method may be used, but not both.

(l) *Casualty reserve account.* The costs assigned under this account shall be any payments mutually agreed to by the person offering the subsidy and the railroad for the purpose of holding the subsidizer harmless from any liability under those accounts that are used to record any costs incurred by the railroad as a result of an accident.

(m) *Rehabilitation.* (1) For abandonment purposes the applicant carrier shall project the amounts necessary to permit efficient operations over the line segment. The carrier shall indicate the level of FRA Class Safety Standard to be attained with the amount of expenditure. *See* 49 CFR Part 213. Applicant-carrier, in making its projection of rehabilitation costs, shall give consideration to

(i) The cost to attain the lowest operationally feasible track level,

(ii) The cost to attain the rehabilitation level resulting in the lowest operating and rehabilitation expenditures, or

(iii) The cost to attain the rehabilitation level resulting in the lowest loss, or highest profit, from operations.

(2) For subsidy purposes rehabilitation costs shall not be included unless:

(i) The track does not meet minimum Federal Railroad Administrative Class I Safety Standards (49 CFR part 213), in which case the railroad will furnish, with the abandonment application, a detailed estimate of the costs to rehabilitate the track to the minimum level; or

(ii) The potential subsidizer requests a level of service which requires expenditures for rehabilitation.

(n) *Off-branch costs.* Until the ICC revises the Rail Form A cost procedure to facilitate the incorporation of the new USOA as well as review and if necessary change the theories contained within the present formula the procedure for determining the off-branch costs will use the existing Rail Form A formula applied to the latest Annual Report, Form R-1, that has been filed by the railroad using the prior unrevised accounting system. The off-branch costs developed in this section shall be separated between "off-branch costs other than return on freight cars" and "return on value-freight cars". The development of the off-branch costs shall be as follows:

(1) Terminal costs, line-haul car costs, and interchange costs shall be considered as the off-branch avoidable costs of providing service over the remainder of the railroad's system. These costs shall be computed by applying variable unit costs to the service units attributed to the branch traffic during the subsidy period.

(2) The procedure for determining the off-branch costs will use the existing Rail Form A cost formula. This formula will be applied to the latest Annual Report Form R-1 filed by the railroad, with two exceptions. The amount used in the formula for freight car depreciation will be calculated using the procedure discussed in paragraph (g)(3) of this section applied to the average total car fleet of the railroad. The return on investment in freight cars shall be computed by developing the replacement cost of the carrier's average car fleet owned during the year for which the latest Annual Report Form R-1 is filed. The replacement cost of the average car fleet multiplied by the current cost of capital developed in paragraph (g)(3) of this section shall be used in the determination of the off-branch costs.

(3) Calculations by car type: (i) The sum of all terminal costs incurred off the branch line shall be calculated by multiplying the modified terminal cost per carload by car type, paragraph (n)(2) of this section, by the total number of carloads originated or terminated on the branch line during the subsidy year. To this amount add the normal terminal cost per carload by car type, paragraph (n)(2) of this section, times the number of carloads which originated or terminated on the branch that are local to the railroad serving the branch.

(ii) The sum of the hundredweight terminal costs incurred off the branch line shall be calculated by multiplying the hundredweight of freight originated or terminated on the branch that are local to the railroad serving the branch.

(iii) The sum of the line-haul car-mile costs incurred off the branch line shall be calculated by multiplying the car-mile cost by car type, paragraph (n)(2) of this section, by the loaded car-miles generated off the branch line by cars originated or terminated on the branch during the subsidy year. Where overhead movements to and from the branch have been included in the on-branch cost calculation under other sections of § 1152.32 the related loaded car-miles shall be excluded from this calculation.

(iv) The sum of the line-haul ton-mile costs shall be determined by multiplying the ton-mile cost, paragraph (n)(2) of this section, by the total ton-miles of revenue freight incurred by the railroad on its lines, other than the branch lines, for revenue freight originated or terminated on the branch during the subsidy year.

(v) The interchange cost shall be calculated by multiplying the cost per car interchanged, paragraph (n)(2) of this section, by the number of carloads of traffic interchanged at a point off the branch line and originated or terminated on the branch.

(4) Class II and Class III line-haul railroads shall calculate off-branch costs as follows (based on: The carrier's latest Form R-2 or R-3 filed with the ICC; the ICC's latest *Rail Carload Cost Scales*; and the carrier's own records):

(i) A Carrier that has only freight operations shall calculate the estimated system variable expenses by multiplying the total operating expenses by .78, the three-year composite variability ratio for all Class I railroads. If a carrier has passenger and freight service, the freight portion of the total estimated system variable expenses shall be calculated by multiplying the total estimated system variable expenses, calculated as above, by the ratio of freight related operating expenses to total railway operating expenses [freight related operating expenses divided by total railway operating expenses].

(ii) The total number of revenue carload terminal handlings shall be determined from company records [originating and terminating (local) revenue carloads multiplied by 2, plus originating or terminating and interchange (interline) revenue carloads].

(iii) The total number of revenue carload interchange handlings shall be determined from company records [bridge (interchange to interchange) revenue carloads multiplied by 2, plus revenue carloads that are originated or terminated and interchanged (interline)].

(iv) The average load per car shall be determined from company records [ton-miles-revenue freight, divided by loaded freight car-miles].

(v) The ratios employed to separate the estimated system variable expenses between interchange, terminal and line-haul operations are calculated as follows:

(A) Theoretical interchange expenses are calculated by multiplying the number of revenue carload interchange handlings, paragraph (n)(4)(iii) of this section, by the interchange variable cost per carload for other than box, unequipped, refrigerator, tank and TOFC cars (ICC *Rail Carload Cost Scales*, Table 12, Line 6 or 14, appropriate region, multiplied by 100).

(B) Theoretical terminal carload expenses are calculated by multiplying the number of revenue carload terminal handlings, paragraph (n)(4)(ii) of this section, by the average train variable terminal cost per carload for box-general service, equipped (one half of the terminal cost per carload ICC *Rail Carload Scales*, Table 3, appropriate region, line 2, col. (6)).

(C) Theoretical terminal lading expenses are calculated by multiplying the total terminal tons [terminal carload handlings, paragraph (n)(4)(ii) of this section, multiplied by average load per car, paragraph (n)(4)(iv) of this section] by the average train variable terminal cost per ton for box-general service, equipped [one half of the terminal cwt. cost, ICC *Rail Carload Cost Scales*, Table 3, appropriate region, line 2, col. (7), multiplied by 20].

(D) Theoretical line-haul car expenses are calculated by multiplying the carrier's loaded car-miles by the average train variable cost per car-mile excluding interchange, for box-general service, equipped [ICC *Rail Carload Cost Scales*, Table 3, appropriate region, Line 2, col. (4), minus Appendix B, appropriate region, Line 2, col. (4)].

(E) Theoretical line-haul lading expenses are calculated by multiplying the carrier's total ton-miles of revenue freight by the average train variable ton-mile cost for a box-general service, equipped [wt-mile cost, ICC *Rail Carload Cost Scales*, Table 3, appropriate region, Line 2, col. (5), multiplied by 20].

(F) Theoretical station clerical expenses are calculated by multiplying total revenue carload terminal handlings, paragraph (n)(4)(ii) of this section, by the variable station clerical cost per carload [one half of the station clerical cost per carload, ICC *Rail Carload Cost Scales*, Table 18, appropriate region, Line (2), multiplied by 100].

(G) Total theoretical system variable expenses are calculated by adding paragraphs (n)(4)(v)(A) plus (n)(4)(v)(B) plus (n)(4)(v)(C) plus (n)(4)(v)(D) plus (n)(4)(v)(E) of this section.

(H) The ratio for interchange variable expenses is calculated by dividing total theoretical interchange variable expenses, paragraph (n)(4)(v)(A) of this section, by the total theoretical system variable expenses, paragraph (n)(4)(v)(G) of this section.

(I) The ratio for terminal variable expenses is calculated by dividing the total theoretical terminal variable expenses, paragraphs (n)(4)(v)(B) plus (n)(4)(v)(C) of this section, by the total theoretical system variable expenses, paragraph (n)(4)(v)(G) of this section.

(J) The ratio for line-haul variable expenses is calculated by dividing total theoretical line-haul variable expenses, paragraphs (n)(4)(v)(D) plus (n)(4)(v)(E) of this section, divided by the total theoretical system variable expenses, paragraph (n)(4)(v)(G) of this section.

(K) The ratio for station clerical variable expenses is calculated by dividing total theoretical station clerical variable expenses, paragraph (n)(4)(v)(F) of this section, by the total theoretical system variable expenses, paragraph (n)(4)(v)(G) of this section.

(vi) The carrier's total system variable expenses are separated as follows:

(A) Total interchange variable expenses are calculated by multiplying the total system variable expenses, paragraph (n)(4)(i) of this section, by the interchange variable expense ratio, paragraph (n)(4)(v)(H) of this section.

(B) Total terminal variable expenses are calculated by multiplying the total system variable expenses, paragraph (n)(4)(i) of this section, by the terminal variable expense ratio, paragraph (n)(4)(v)(I) of this section.

(C) Total line-haul variable expenses are calculated by multiplying the total system variable expenses, paragraph(n)(4)(i) of this section, by the line-haul variable expense ratio, paragraph (n)(4)(v)(J) of this section.

(D) Total station clerical variable expenses are calculated by multiplying the total system variable expenses, paragraph (n)(4)(i) of this section by the station clerical expense ratio, paragraph (n)(4)(v)(K) of this section.

(vii) The carrier's unit costs shall be determined as follows:

(A) The interchange cost per carload shall be calculated by dividing the total interchange variable expense, paragraph (n)(4)(vi)(A) of this section by the total number of interchange handlings, paragraph (n)(4)(iii) of this section.

(B) The terminal costs per carload shall be calculated by the total terminal variable expenses, paragraph (n)(4)(vi)(B) of this section, by the total number of terminal handlings, paragraph (n)(4)(ii) of this section.

(C) The line-haul cost per car-mile shall be calculated by dividing the total line-haul variable expenses, paragraph (n)(4)(vi)(C) of this section, by the total number of loaded car-miles.

(D) The modified terminal cost per carload shall be calculated by adding the interchange cost per carload, paragraph (n)(4)(vii)(A) of this section, to the station clerical cost per carload total station clerical variable expense, paragraph (n)(4)(vi)(D) of this section, divided by the total number of terminal handlings, paragraph (n)(4)(ii) of this section.

(viii) The interchange costs shall be calculated by multiplying the interchange cost per carload, paragraph (n)(4)(vii)(A) of this section, by the number of carloads of traffic interchanged with other railroads.

(ix) The terminal cost shall be calculated by multiplying the modified terminal cost per carload, paragraph (n)(4)(vii)(D) of this section, times the number of carloads which originated or terminated on the branch during the subsidy year. To this amount add the normal terminal cost per carload, paragraph (n)(4)(vii)(B) of this section, times the number of carloads which originated or terminated on the branch that are local to the railroad serving the branch.

(x) The line-haul costs shall be calculated by multiplying the line-haul cost per car-mile, paragraph (n)(4)(vii)(C) of this section, by the loaded car-miles generated off the branch by cars originated or terminated on the branch during the subsidy year.

(5) The railroad shall be entitled to recover the impact of inflation on off-branch costs that occur during the period between the calendar year which is used for developing subsidy year unit costs and the 12 month period covered by the subsidy agreement. Calendar year used in this section shall mean the January 1 to December 31 period used to develop unit costs that are applied to the subsidy year operations. The impact of inflation on off-branch costs shall be calculated as follows:

(i) The railroad shall determine the following calendar year items from its Annual Report Form R-1 that was used in developing unit costs for the subsidy year and company records, (Class II and Class III railroads shall adapt the procedure using similar data from Forms R-2 or R-3 or company records).

(A) Total, railroad's Salaries and Wages, [Schedule 410, col. (b)];

(B) U.S. Government old-age retirement and unemployment insurance taxes (including medicare and supplemental annuities), [Schedule 451, Section (B)];

(C) Employee Health and Welfare expenses, [company records];

(D) Transportation: Train Operations; Locomotive Fuel, Materials, tools, supplies and lubricants; plus Transportation: Yard Operations; Locomotive Fuel, Materials, tools, supplies, fuels, and lubricants, [Schedule 410, col. (c)];

(E) Transportation: Train Operations; Electric Power Purchased or Produced for Motive Power, Materials, tools, fuel and lubricants and Purchased Services; plus Transportation: Yard Operations; Electric Power, Purchased or Produced for Motive Power, Materials, tools, fuels and lubricants and Purchased Services, [Schedule 410, col. (c) and (d)];

(F) Equipment: Locomotives; Repair and Maintenance, Materials, tools, supplies, fuels, and lubricants; Freight Cars; Repair and Maintenance, Materials, tools, supplies, fuels, and lubricants; plus Transportation; Train Operations; Train Inspection and Lubrication, Materials, tools, and supplies, fuels, and lubricants; Train Crews, Materials, tools, supplies, fuels, and lubricants; Servicing Locomotives, Materials, tools, supplies, fuels, and lubricants; plus Yard Operations; Switch Crews, Materials, tools, supplies, fuels, lubricants; Servicing Locomotives, Materials, tools, and supplies, fuels, and lubricants, [Schedule 410, col. (c)];

(G) Railway Tax Accruals (excluding Federal Income Taxes and Payroll Taxes), [Schedule 451, Section (b)];

(H) Total operating expenses, freight portion, [Schedule 410, col. (f)];

(I) Total—All other operating expenses, paragraph (n)(5)(i)(H) minus the sum of paragraphs (n)(5)(i)(A), (n)(5)(i)(B), (n)(5)(i)(C), (n)(5)(i)(D), (n)(5)(i)(E), and (n)(5)(i)(F).

(ii) The Railroad shall determine the following ratios:

(A) *Employee Compensation Update Ratio.* (*1*) The calendar year average straight-time compensation per hour is determined by: Adding the total straight-time compensation for transportation employees to the total staight-time compensation for train and engine employees; divided by the total straight-time service hours for transportation employees plus the total straight-time service hours for train and engine employees, [ICC *Annual Report of Employees, Service and Compensation. Forms A and B*];

(*2*) The subsidy year average straight-time compensation per hour is determined by: Adding the total straight-time compensation for transportation employees to the total straight-time compensation for train and engine employees, for the twelve months of the subsidy year; divided by the total straight-time service hours for transportation employees plus the total straight-time service hours for train and engine employees, for the twelve months of the subsidy year, [ICC *Monthly Report of Employees, Service and Compensation Forms A and B*];

(*3*) The Employee Compensation Update ratio is determined by dividing the subsidy year average straight-time compensation per hour, paragraph (n)(5)(ii)(A)(*2*); by the calendar year average straight-time compensation per hour, paragraph (n)(5)(ii)(A)(*1*) of this section.

(B) *Payroll Taxes Update Ratio.* (*1*) The calendar year employer contribution rate per hour is determined by: Adding the employer maximum annual tax per employee for Railroad Retirement to the employer paid maximum annual tax per employee for Railroad Unemployment Insurance, (Bureau of the Actuary, U.S. Railroad Retirement Board]; divided by 2080, the average annual number of working hours per year. The quotient is added to the hourly rate for supplemental annuities, [National Railway Labor Conference];

(*2*) The subsidy year employer contribution rate per hour is determined by: Multiplying the employer's monthly rate for Railroad Retirement and Railroad Unemployment Insurance by the maximum monthly individual employee's wage base, respectively, for the subsidy year, [Bureau of the Actuary, U.S. Railroad Retirement Board];

and dividing by 2080, the average annual number of working hours per year. The quotient is added to the hourly rate for supplemental annuities, [National Railway Labor Conference];

(*3*) The Payroll Taxes Update Ratio is determined by: Dividing the subsidy year contribution rate per hour, paragraph (n)(5)(ii)(B)(*2*) by the calendar year contribution rate per hour, paragraph (n)(5)(ii)(B)(*1*) of this section.

(C) *Health and Welfare Costs Update Ratio.* (*1*) Calendar year Health and Welfare costs shall be determined by dividing total monthly costs for each month, company records, by the total employees, middle of the month count for each month, [ICC *Monthly Report of Employees, Service, and Compensation, Forms A and B*]. The total Calendar year health and welfare costs is the sum of the twelve monthly average costs per employee developed in this subsection.

(*2*) Subsidy year Health and Welfare costs are determined by dividing total monthly costs for each month, company records, by total employees, middle of the month count, [ICC *Monthly Report of Employees, Service, and Compensation, Forms A and B*]. The total subsidy year health and welfare costs is the sum of the twelve monthly average costs per employee developed in this subsection.

(*3*) The Health and Welfare Costs Update Ratio is determined by: Dividing the subsidy year costs per employee, paragraph (n)(5)(ii)(C)(*2*) by the calendar year costs per employee, paragraph (n)(5)(ii)(C)(*1*) of this section.

(D) [Reserved]

(E) *Fuel Cost Update Ratio.* (*1*) The calendar year average fuel cost per gallon is determined by: Dividing the cost of Fuel, Diesel Oil, schedule 750, col. (b), by the number of gallons, Diesel Oil, consumed in freight, passenger and yard switching service, schedule 750, col. (b);

(*2*) The subsidy year average fuel cost per gallon is determined by: Dividing the cost of fuel, diesel oil, company records, for the subsidy year, by the number of gallons, diesel oil consumed in freight, passenger and yard switching operations, company records, for the subsidy year.

(*3*) The Fuel Cost Update Ratio is determined by: Dividing the subsidy year fuel cost per gallon, paragraph (n)(5)(ii)(E)(*2*) by the calendar year fuel cost per gallon, paragraph (n)(5)(ii)(E)(*1*) of this section.

(F) *Electric Power Cost Update Ratio.* (*1*) The calendar year cost per kilowatt hour is determined by: Dividing the cost of electric kilowatt hours [schedule 750, col. (c)] by the kilowatt hours consumed by freight, passenger, and yard switching operations [schedule 750, col. (c)];

(*2*) The subsidy year cost per kilowatt hour is determined by: Dividing the cost of electric kilowatt hours [company records], by the kilowatt hours consumed by freight, passenger, and yard switching operations [company records];

(*3*) The Electric Power Cost Ratio is determined by: Dividing the subsidy year cost per kilowatt hour, paragraph (n)(5)(ii)(F)(*2*) by the calendar year cost per kilowatt hour, paragraph (n)(5)(ii)(F)(*1*) of this section.

(G) *Materials and Supplies Cost Update Ratio.* (*1*) The calendar year materials and supplies index is an average of the four calendar year quarterly indices [Association of American Railroads (AAR), Economics and Finance Department, series Quarterly Material, Price and Wages (QMPW), applicable region].

(*2*) The subsidy year materials and supplies ratio is an average of the four subsidy year quarterly indices [Association of American Railroads (AAR), Economics and Finance Department, Series Quarterly Material, Price, and Wages (QMPW), applicable region].

(*3*) The Materials and Supplies Cost Update Ratio is determined by: Dividing the subsidy year ratio, paragraph (n)(5)(ii)(G)(*2*) by the calendar year ratio, paragraph (n)(5)(ii)(G)(*1*) of this section.

(iii) The Railroad shall determine the following subsidy year expense items;

(A) Total subsidy year salaries and wages [calendar year total railroad salaries and wages, paragraph (n)(5)(i)(A) multiplied by the Employee Compensation Update Ratio, paragraph (n)(5)(ii)(A)(*3*)].

(B) U.S. Government old-age retirement and unemployment insurance (including medicare and supplemental annuities), [calendar year U.S. Government old-age retirement and unemployment insurance (including medicare and supplemental annuities), paragraph (n)(5)(i)(B) multiplied by the Payroll Taxes Update Ratio, paragraph (n)(5)(ii)(B)(*3*)].

(C) Employee Health and Welfare Expenses [calendar year, Employee Health and Welfare expenses, paragraph (n)(5)(i)(C) multiplied by the Health and Welfare Costs Update Ratio, paragraph (n)(5)(ii)(C)(*3*)].

(D) Total employee compensation would be the sum of: The subsidy year total railroad's salaries and wages, paragraph (n)(5)(iii)(A) of this section; plus U.S. Government old age retirement and unemployment insurance (including medicare and supplemental annuties), paragraph (n)(5)(iii)(B) of this section; plus Employee Health and Welfare Expenses, paragraph (n)(5)(iii)(C) of this section.

(E) Transportation: Train Operations; Locomotive Fuel, Materials, tools, supplies, fuels, and lubricants; plus Transportation: Yard Operations: Locomotive Fuel, Materials, tools, supplies, fuels, and lubricants [calendar year expenses, paragraph (n)(5)(i)(D) multiplied by the Fuel Cost Update Ratio, paragraph (n)(5)(ii)(E)(*3*)].

(F) Transportation: Train Operations; Electric Power Purchased or Produced for Motive Power, Materials, tools, supplies, fuels, and lubricants and Purchased Services; plus Transportation: Yard operations: Electric Power Purchased or Produced for Motive Power, Materials, tools, supplies, fuels, and lubricants and Purchased Services [calendar year expenses, paragraph (n)(5)(i)(E) multiplied by the Electric Power Cost Update Ratio, paragraph (n)(5)(ii)(F)(*3*).

(G) Equipment: Locomotives; Repair and Maintenance, Materials, tools, supplies, fuels, and lubricants; Freight Cars; Repair and Maintenance, Materials, tools, supplies, fuels, and lubricants; plus Transportation: Train Operations; Train Inspection and Lubrication, Materials, tools, supplies, fuels, and lubricants; Train Crews, Materials, tools, supplies, fuels, and lubricants; Servicing Locomotives, Materials, tools, supplies, fuels, and lubricants; plus Transportation Yard Operations; Switch Crews, Materials, tools, supplies, fuels, and lubricants; Servicing Locomotives, Materials, tools, supplies, fuels, and lubricants, [calendar year expenses, paragraph (n)(5)(i)(F) multiplied by the Materials and Supplies Costs Update Ratio, paragraph (n)(5)(ii)(G)(*3*)].

(H) Railway Tax Accruals (excluding Federal Income Taxes and Payroll taxes), [calendar year expenses, paragraph (n)(5)(i)(G) multiplied by 1.0].

(I) Total all other operating expenses, [Total calendar year all other operating expenses, paragraph (n)(5)(i)(I) multiplied by 1.0].

(iv) The railroad shall develop a composite index as follows:

(A) Total calendar year expenses [paragraph (n)(5)(i)(H) plus calendar year Railway Tax Accruals (excluding Income Taxes and Payroll Taxes), paragraph (n)(5)(i)(G)];

(B) Total subsidy year expenses [sum of paragraphs (n)(5)(iii)(D), (n)(5)(iii)(E), (n)(5)(iii)(F), (n)(5)(iii)(G), (n)(5)(iii)(H), and (n)(5)(iii)(I)].

(C) Composite Index [Total subsidy year expenses, paragraph (n)(5)(iv)(B), divided by total calendar year operating expenses, paragraph (n)(5)(iv)(A).

(v) The composite index, paragraph (n)(5)(iv)(C) of this section, shall be applied to the off-branch costs for twelve months of the subsidy year, as provided in § 1155.7(n) inflation. The difference between the off-branch costs as increased for inflation and the off-branch costs previously calculated by the railroad shall be included in the railroad's year-end Financial Status Report, as provided in § 1155.5(a).

(o) *Locomotive depreciation*. The depreciation cost for locomotives used on the line shall be calculated using the following procedure:

(1) The current replacement cost for each type of locomotive used to serve the line will be based on the most recent purchase of that particular type and size locomotive by the carrier

ndexed to the midpoint of the year or n amount quoted by the manufacturer.

(2) The depreciation rate that will be applied to the replacement cost shall be the carrier's component rate for each type of locomotive as reported in the latest Annual Report Form R-1 submitted to the Commission or from the company records. Carriers using depreciation rates based on company records must explain why composite rates are inappropriate; provide a detailed explanation of the methodology used to compute the alternate depreciation rate; and demonstrate that these rates have been used consistently.

(3) The annual depreciation cost for each type of locomotive shall be calculated by multiplying the replacement cost(s) developed in paragraph (o)(1) of this section by the rate from paragraph (o)(2) of this section.

(4) The depreciation expense for each type of locomotive shall be assigned to the line on the ratio of the hours incurred serving the line to the average system locomotive unit hours in service by each of the following categories of locomotives: Yard-diesel; yard-other; road-diesel; and road-other. The ratio for each type of locomotive used to serve the line shall be the same as that developed in paragraph (h)(4) of this section.

(5) The depreciation shall be calculated by multiplying the annual depreciation expense for each type of locomotive developed in paragraph (o)(3) of this section by the ratio(s) developed in paragraph (o)(4) of this section.

(p) *Opportunity costs*. Applicant-carrier may, at its discretion, present evidence of its opportunity costs, if the assets engaged in the line proposed to be abandoned could be used more profitably in some other capacity. Opportunity costs may be calculated in accordance with the methodology established in § 1152.34 of this part, or by using any other reasonable, fully-explained method. Opportunity costs are not included as costs on Exhibit 1 described at § 1152.36. These costs should be submitted as a separate exhibit to the application.

(q) *Labor costs*. (1) The salaries, wages and fringe benefits of personnel exclusively assigned to the line segment shall be deemed attributable costs of the segment. The salaries, wages, and fringe benefits of personnel not exclusively assigned to the line segment shall be deemed attributable costs of the segment to the extent they are shown to be apportionable to the segment to be abandoned.

(2) These costs shall be deemed attributable notwithstanding any obligation of applicant to provide employee protection for employees after the abandonment.

[43 FR 7625, Feb. 24, 1978, as amended at 43 FR 10564, Mar. 14, 1978. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 48 FR 54239, Dec. 1, 1983; 50 FR 31592, Aug. 5, 1985; 52 FR 2706, Jan. 26, 1987; 54 FR 18517, May 1, 1989; 54 FR 26046, June 21, 1989; 54 FR 27795, June 30, 1989]

§ 1152.33 Apportionment rules for the assignment of expenses to on-branch costs.

The accounts specified under § 1152.32(a), (b), (c), and (d) as having an assignment basis other than "Actual" shall be apportioned according to the rules contained in this section.

(a) *Maintenance of way and structures*—(1) *Roadway machines*. All accounts designated XX-13-36 shall be assigned to the branch on the basis of the average repair costs, for each type of machine, included in the daily rental fees charged by the operating railroad or as published by the General Manager's Association of Chicago (GMA), based on the actual number of days each type of machine is used on the branch.

(2) *Small tools and supplies*. All accounts designated XX-13-37 shall be assigned to the branch as follows: (i) The costs of supplies, consumed in the operation of roadway machines, shall be assigned to the branch on the basis of the average costs of supplies per day, included in the daily rental fees charged by the operating railroad or as published by the GMA, multiplied by the actual number of days that the machine is used on the branch; (ii) the costs of small tools shall be assigned to the branch on the basis of the ratio

that the branch amounts in Accounts 11-11-10 through 11-11-17 and 11-11-48, plus 11-12-10 through 11-12-17 and 11-12-48 bear to the railroad's system total for the same accounts.

(3) *Fringe benefits.* Fringe benefits shall be assigned to the branch separated between running, switching and other, on the ratio that the total branch salary and wages bear to the total system salaries and wages for each activity as follows:

(i) *Fringe benefits—Running, Account 12-11-00,* total of all 11-11-XX accounts branch to system;

(ii) *Fringe benefits—Switching, Account 12-12-00,* total of all 11-12-XX accounts branch to system; and

(iii) *Fringe benefits—Other, Account 12-13-00,* total of all 11-13-XX accounts branch to system.

(b) *Maintenance of equipment*—(1) *Locomotive repairs and maintenance.* All accounts designated XX-21-41 shall be separated between yard and road with a further separation between diesel and other (electric). The costs for these accounts for yard locomotives shall be assigned to the branch separately for diesel and electric locomotives on the basis of the ratio of branch diesel and electric yard locomotive unit-hours to the total system diesel and electric yard locomotive unit-hours. The costs for these accounts for road locomotives shall be assigned to the branch separately for diesel and electric locomotives on the basis of the ratio of branch diesel and electric locomotive gross ton-miles in road service to the total system diesel and electric locomotive gross ton-miles in road service. The costs assigned under these accounts for specialized equipment devoted exclusively to branch line service shall be the actual costs for the specific equipment used.

(2) *Locomotive depreciation.* Locomotive depreciation shall be calculated and assigned in accordance with the procedures set forth in § 1152.32(o).

(3) *Fringe Benefits.* Fringe benefits for locomotives and other equipment shall be assigned to the branch on the ratio that the total branch salary and wages bear to the system total salaries and wages for each type of equipment as follows: (i) *Locomotives—Account 12-21-00,* total of all 11-21-XX accounts branch to system.

(ii) *Other Equipment—Account 12-23-00,* total of all 11-23-XX accounts branch to system.

(iii) Fringe benefits for freight cars shall be calculated by first estimating the total in Account 11-22-42, Freight car repairs—salaries and wages, that is included in the total on branch costs for freight cars as determined from the car day and car mile cost calculations, in § 1152.32(g) of these regulations.

To this amount is added the branch totals in the balance of all 11-22-XX accounts. The ratio of this total branch account to the system total for all 11-22-XX accounts is applied to Account 12-22-00, Fringe Benefits—Freight Cars.

(c) *Transportation*—(1) *Train operations*—(i) *Engine Crews-Materials, Account 21-31-56; Train Crews-Materials, Account 21-31-57; Train Inspection and Lubrication-Salaries and Wages, Account 11-31-62; and Train Inspection and Lubrication-Materials, Account 21-31-62;* If the branch is served by a local/way or through train, the costs in these accounts shall be assigned to the branch on the weighted ratio of the loaded freight train cars on the branch to the total system loaded freight train cars, and the loaded and empty car-miles on the branch to the total system loaded and empty car-miles. This shall be calculated as follows:

(A) To determine the car-mile portion of these accounts,

(*1*) Multiply the total amounts in these accounts (from the R-1 Annual Report, Schedule 410) by 69 percent (the ratio of train-mile and running expenses from Rail Form A),

(*2*) Divide the amount in paragraph (c)(1)(i)(A)(*1*) of this section by the total system loaded and empty car-miles, and

(*3*) Multiply the car-mile unit cost factor from paragraph (c)(1)(i)(A)(*2*) of this section by the on-branch car-miles (loaded and empty).

(B) To determine the carload portion of these accounts.

(*1*) Multiply the total amounts in these accounts by 31 percent (the ratio of terminal expenses from Rail Form A),

(*2*) Divide the amount in paragraph (c)(1)(i)(B)(*1*) of this section by the total system carloads, and

(*3*) Multiply the carload unit cost factor from paragraph (c)(1)(i)(B)(*2*) of this section by the on branch carloads.

(C) To determine the total costs assignable to the branch for these accounts, add the amounts developed in paragraphs (c)(1)(i)(A)(*3*) and (c)(1)(i)(B)(*3*) of this section.

(ii) All accounts designated xx-31-67 shall be assigned to the branch in accordance with the following procedure. The dollar amounts used in the determination of locomotive fuel costs shall be based on data contained in the most recent publication issued by the General Managers Association (GMA) relating to the rental of locomotives. The total number of locomotive unit hours incurred by the locomotive(s) shall then be categorized according to the applicable GMA horsepower classification group. The fuel cost is derived from the Repairs and Supplies Expenses element of the locomotive rental rates published by the GMA. The fuel cost per locomotive unit hour shall be determined for each GMA horsepower classification group by multiplying the latest GMA fuel cost percentage by the Repairs and Supplies Expense per hour included in each group. The fuel cost update ratio is determined by using the indices for fuel from the Association of American Railroad's (AAR's) Railroad Cost Recovery Index (RCR). The indices shall be taken from the district of which the railroad is assigned by the Commission. The index for the current period is divided by the index of the period representative of the GMA publication to develop the fuel update ratio. The fuel cost per locomotive unit hour developed for each GMA horsepower group shall be multiplied by the fuel update ratio to determine the fuel cost per locomotive hour for each horsepower group. The updated fuel cost per locomotive unit hour for each applicable GMA group shall be multiplied by the number of locomotive unit hours incurred in serving the branch by locomotives of that GMA horsepower classification group. The total cost developed under this procedure for each horsepower classification shall be the locomotive fuel cost assignable to the branch line.

(iii) *Electric power purchased or produced for motive power*—All accounts designated XX-31-68 shall be assigned to the branch on the ratio of road electric locomotive unit hours on the branch to the total system road electric locomotive unit hours.

(iv) *Servicing locomotives*—All accounts designated XX-31-69 shall be assigned to the branch on the ratio of road locomotive unit miles on the branch to the total system road locomotive unit miles.

(2) *Yard operations*—(i) *Switch Crews—Materials, Account 21-32-64,* and *Servicing Locomotives,* all accounts designated XX-32-69. The costs for these accounts shall be assigned to the branch on the ratio of yard locomotive unit hours on the branch to the system total yard locomotive unit hours.

(ii) *Locomotive fuel*—All accounts designated XX-32-67 shall be assigned to the branch on the ratio of yard diesel locomotive unit hours on the branch to the total system yard diesel locomotive unit hours.

(iii) *Electric power purchased or produced for motive power*—All accounts designated XX-32-68 shall be assigned to the branch on the ratio of yard electric locomotive unit hours on the branch to the total system yard electric locomotive unit hours.

(3) *Administrative support operations*—(i) *Loss and damage claims processing*—All accounts designated XX-35-78 shall be assigned to the branch on the ratio of the number of claims processed for loss or damage occurring on the branch to the total number of claims processed by the railroad.

(4) *Transportation fringe benefits.* Fringe benefits shall be assigned to the branch separated between train operations, yard operations, train and yard operations common, specialized service operations, and administrative support operations. The costs for each activity shall be assigned to the branch on the ratio that the total branch salary and wages bear to the

total system salary and wages for each activity shown below.

(i) *Train Operations, Account 12-31-00,* total of all 11-31-XX accounts branch to system.

(ii) *Yard Operations, Account 12-32-00,* total of all 11-32-XX accounts branch to system.

(iii) *Train and Yard Operations Common, Account 12-33-00,* total of all 11-33-XX accounts branch to system.

(iv) *Specialized Service Operations, Account 12-34-00,* total of all 11-34-XX accounts branch to system.

(v) *Administrative Support, Account 12-35-00,* total of all 11-35-XX accounts branch to system.

(d) *General administrative.* (1) *Fringe Benefits, Account 12-61-00,* shall be assigned to the branch on the ratio that the total branch salary and wages in all 11-61-XX accounts bear to the system total salary and wages in all 11-61-XX accounts.

[43 FR 7624, Feb. 24, 1978. Redesignated at 47 FR 49581, Nov. 1, 1982 and amended at 48 FR 54241, Dec. 1, 1983; 52 FR 2709, Jan. 26, 1987]

§ 1152.34 Return on investment.

Return on investment for road property shall be computed according to the procedures set forth in this section.

(a) [Reserved]

(b) [Reserved]

(c) *Return on investment—road properties.* Return on investment—road properties shall be computed according to the following procedures:

(1) The investment base to which the nominal return element shall apply shall be the sum of:

(i) The allowable working capital computed at 15 days on-branch cash avoidable costs (on branch avoidable costs less depreciation).

(ii) The amount of current income tax benefits resulting from abandonment of the line which would have been applicable to the period of the subsidy agreement. (Conversely, if the railroad would incur an income tax liability from abandonment, the liability should be deducted from the investment base.) This information is to be furnished by the railroad and subject to audit by the person offering the subsidy.

(iii) The net liquidation value for the highest and best use for non-rail purposes, of the rail properties on the line to be subsidized which are used and required for performance of the services requested by the persons offering the subsidy. This value shall be determined by computing the current appraised market value of such properties for other than rail transportation purposes, less all costs of dismantling and disposition of improvements necessary to make the remaining properties available for their highest and best use and complying with applicable zoning, land use, and environmental regulations. If rehabilitation has been performed along the line during any subsidy year and rehabilitation expenses have been paid by the subsidizer under 49 CFR 1152.32(m)(2), the investment base shall exclude the increment to the net liquidation value of the line caused by the rehabilitation project.

(d) Reasonable return. A rail carrier shall furnish to the Commission, and to any financially responsible person considering making a offer of a rail service continuation payment, a substantiated statement showing its current nominal cost of capital. The railroad's nominal cost of capital shall be the current before tax cost of capital, weighted to the capital structure, and adjusted for the effects of the combined statutory Federal and State income tax rates. This rate of return expressed as a percent, shall be calculated as follows:

(1) The railroad shall determine its permanent capital structure ratio for debt and equity capital such that the two numbers total 100 percent. This capital structure will be the actual capital structure of the railroad. If this calculation is not possible or also not representative because the railroad is part of a conglomerate, the debt-equity ratio from the Commission's latest Determination of Adequate Railroad Revenues will be used. However, if the debt-equity ratio for the railroad industry is used then the industry average equity and debt rate from the Commission's latest revenue adequacy finding must also be used in

paragraphs (d)(2) and (d)(3) of this section.

(2) The current nominal cost of debt shall be determined by taking the average of all debt instruments (including bonds, equipment trust certificates, financial lease arrangement, et cetera) issued by the carrier in the most recent 12 month period. The debt cost calculated by this procedure is a before-tax rate and is not adjusted for inflation or income taxes.

(3) The current nominal after tax cost of equity shall be an amount equal to that which a prudent investor would expect to earn through investment in the market place. The current after tax nominal cost of equity is divided by 1 minus the combined statutory Federal and State income tax rates. This will develop the nominal cost of equity on a before tax basis.

(4) The current nominal before-tax cost of debt is multiplied by the current percentage of debt to total capital to obtain a weighted before-tax nominal cost of current debt.

(5) The current nominal before-tax cost of equity is multiplied by the current percentage of equity to total capital to obtain a weighted nominal before-tax cost of current equity.

(6) The results of paragraphs (d)(4) and (d)(5) are added together to determine the current nominal cost of capital.

(e) Holding gain (loss)-road properties. The railroad shall determine the holding gain (loss) that is projected to occur during the forecast and/or subsidy year.

[52 FR 2709, Jan. 26, 1987, as amended at 53 FR 45766, Nov. 14, 1988; 53 FR 49667, Dec. 9, 1988; 54 FR 18518, May 1, 1989]

§ 1152.35 [Reserved]

§ 1152.36 Submission of revenue and cost data.

The following information shall be submitted by applicant as Exhibit 1 to an abandonment or discontinuance application (§ 1152.22(d)) and shall be developed in accordance with the methodology established in §§ 1152.31 through 1152.35, as applicable. Such information, form and methodology shall also be used by an offeror of financial assistance to formulate a Proposed Subsidy Payment (§ 1152.27).

	Base year operations	Forecast year operations	Projected subsidy year operations
Revenues attributable for:			
1. Freight originated and/or terminated on branch.			
2. Bridge traffic			
3. All other revenue and income.			
4. Total revenues attributable (lines 1 through 3).			
Avoidable costs for:			
5. On-branch costs (lines 5a through 5k).			
a. Maintenance of way and structures.			
b. Maintenance of equipment.			
c. Transportation			
d. General administrative.			
e. Deadheading, taxi, and hotel.			
f. Overhead movement.			
g. Freight car costs (other than return on freight cars).			
h. Return on value-locomotives.			
i. Return on value-freight cars.			
j. Revenue taxes			
k. Property taxes			
6. Off-branch costs			
a. Off-branch costs (other than return on freight cars).			
b. Return on value-freight cars.			
7. Total avoidable costs (line 5 plus line 6).			
Subsidization costs for:			
8. Rehabilitation [1]			
9. Administration costs (subsidy year only) [2].			
10. Casualty reserve account [3].			
11. Total subsidization costs (lines 8 through 10).			
Return on value:			
12. Valuation of property (lines 12a through 12c).			
a. Working capital	XXXX		
b. Income tax consequences.	XXXX		
c. Net liquidation value.	XXXX		
13. Nominal rate of return.	XXXX		
14. Nominal return on value (line 12 times line 13).	XXXX		

	Base year operations	Forecast year operations	Projected subsidy year operations
15. Holding gain (loss)	XXXX		
16. Total return on value (line 14 minus 15).	XXXX		
17. Avoidable loss from operations (line 4 minus line 7).			
18. Estimated forecast year loss from operations (line 4 minus lines 7 and 16).			
19. Estimated subsidy (line 4 minus lines 7, 11 and 16).			

[1] This projection shall be computed in accordance with § 1152.32(m).

[2] Omit in applications pursuant to §§ 1152.22 and 1152.23.

[53 FR 49668, Dec. 9, 1988, as amended at 54 FR 18518, May 1, 1989]

§ 1152.37 Financial status reports.

Within 30 days after the end of each quarter of the subsidy year, each carrier which is party to a financial assistance agreement shall submit to the subsidizer a Financial Status Report for each line operated under subsidy. Such Financial Status Report shall be in the form prescribed below. Significant deviations from the negotiated estimates must be explained. Unless the parties agree otherwise, the last Financial Status Report issued within the first ten months of the subsidy period will be the basis for negotiating the financial assistance agreement for the subsequent subsidy year. The year-end report will be the basis of the subsidy payment adjustment. All data shall be developed in accordance with the methodology set forth in §§ 1152.31 through 1152.35. In the quarterly reports, the actual data for the year to date and a projection to the end of the subsidy year shall be shown for each item.

	Actual	Projected
Revenues for		
1. Freight originated and/or terminated on branch		
2. Bridge traffic		
3. All other revenue and income		
4. Total revenues (lines 1 through 3)		
Avoidable costs for		
5. On-branch costs (lines 5a through 5j)		
a. Maintenance of way and structures		
b. Maintenance of equipment		
c. Transportation		
d. General administrative		
e. Deadheading, taxi, and hotel		
f. Overhead movement		
g. Freight car costs		
h. Return on investment—locomotives		
i. Revenue taxes		
j. Property taxes		
6. Off-branch costs		
7. Total avoidable costs (line 5 plus line 6)		
Subsidization costs for		
8. Rehabilitation		
9. Administrative costs		
10. Casualty		
11. Total subsidization costs (lines 8 through 10)		
Return on value		
12. Valuation of property (lines 12a through 12c)		
a. Working capital		
b. Income tax consequences		
c. Net liquidation value		
13. Rate of return		
14. Total return on value (line 12 times line 13)		
Subsidy payment		
15. Subsidy payment (line 4 minus lines 7, 11, and 14)		

[43 FR 7624, Feb. 24, 1978. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 54 FR 18519, May 1, 1989]

Subpart E—Abandonment Procedures for Bankrupt Railroads

§ 1152.40 Filing and service requirements.

(a) The application for abandonment shall be filed with the Commission at the same time the proposal to abandon is presented to the Bankruptcy Court.

(b) An original and 10 copies of the application, typewritten or printed on paper approximately 8½ inches by 11 inches with 1½ inch left margin shall be filed with the Secretary of the Interstate Commerce Commission, Washington, DC 20423. The original shall bear the date and signature of the officer or other person authorized to file the application, and shall be complete in itself. The signature may be stamped or typed and the notarial seal may be omitted on the copies. A check or money order payable to the Interstate Commerce Commission must also be submitted to cover the applicable filing fee.

(c) Service. Concurrent with the filing of an application with the Commission, a copy of the application shall be served on all parties entitled to receive notice under § 1152.20.

[44 FR 73106, Dec. 17, 1979. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 53 FR 19302, May 27, 1988]

§ 1152.41 Contents of the application.

Applications filed by bankrupt railroads concerning the abandonment of railroad lines or the discontinuance of rail service shall contain the following information and each paragraphs (a) through (i) of this section shall be attested to by a person having personal knowledge of the matters contained therein:

(a) *General.* (1) Exact name of applicant.

(2) Whether applicant is a common carrier by railroad subject to the Interstate Commerce Act.

(3) Whether the carrier which owns or operates the line of railroad to be abandoned or over which service is to be discontinued is a part of any railroad system.

(4) Relief sought (abandonment of line or discontinuance of service).

(5) Detailed map of the subject line on a sheet not larger than 8 x 10½ inches, drawn to scale, and with the scale shown thereon. The map must show, in clear relief, the exact location of the rail line to be abandoned or over which service is to be discontinued and its relation to other rail lines in the area, highways, water routes, and population centers.

(6) Detailed statement of reasons for filing application.

(7) Name, title, address, and telephone number of the representative of applicant to whom correspondence should be sent.

(8) A statement that a response to the application may be submitted to the Commission within 30 days, and must conform to § 1152.42.

(9) Certificate of service.

(b) *Condition of properties.* (1) The present physical condition of the line including any operating restrictions and estimate of deferred maintenance and rehabilitation costs (e.g., number of ties that need replacing, miles of rail that need replacing and/or new ballast, bridge repairs or replacement needed, and estimated labor expenses necessary to upgrade the line to minimum Federal Railroad Administration Class I safety standards). The bases for the estimates shall be stated with particularity, and workpapers shall be made available upon request of the Commission or any interested persons.

(2) Statement whether the line, or any portion of line, could be operated profitably if necessary deferred maintenance and rehabilitation were performed.

(c) *Service provided.* Describe service performed on the line during the most recent full calendar year for which information is available, and that part of the current year for which information is available. This should include:

(1) Number of trains operated and their frequency;

(2) Miles of track operated (include main line and all railroad-owned sidings);

(3) Average number of locomotive units operated;

(4) Carload commodity group tonnage on the line;

(5) Overhead or bridge traffic by carload commodity group tonnage (include detailed information on overhead or bridge traffic to be retained by the carrier);

(6) Average crew size;

(7) Level of maintenance;

(8) Any important changes in train service undertaken in the 5 calendar years immediately preceding the filing of the application; and

(9) Reasons for decline in traffic, if any, in the best judgment of applicant.

(d) *Revenue and cost data.* (1) Computation of the revenues attributable, avoidable costs and reasonable return on value for the line to be abandoned for the most recent full calendar year (to the extent such branch level data is available), in accordance with the methodology prescribed in § 1152.36, as Exhibit 1.

(2) If the line to be abandoned or over which service is to be discontinued is less than the entire mileage owned or operated by the carrier, a detailed statement showing the effect of the proposed abandonment or discontinuance on its net railway operating income for the calendar year immediately preceding the filing of the application and for that part of the current year for which information is available.

(3) If the line to be abandoned or over which service to be discontinued is operated as a part of a system under common control and management, a detailed statement showing the effect of the proposed abandonment or discontinuance on the net railway operating income of the other individual members of the system for the calendar year immediately preceding the filing of the application and for that part of the current year for which information is available.

(e) *Service area.* (1) The name and population (identify source and date of figures) of each community in which a station on the line is located.

(2) Identification of significant users, as defined in § 1152.2(n), by name, address, principal commodity, and by tonnage and/or carloads for that part of the current year and the previous calendar year for which information is available.

(3) Detailed description of the alternate sources of transportation service (rail, motor, water, air) available, including a detailed description and nature of operations, and the highway network in the proximate area.

(4) Statement of efforts which have been made to continue service through solicitation of additional traffic, and the sale or subsidy of the line and the results of those efforts.

(f) *Environmental and energy impact.* The applicant shall submit as a part of its abandonment or discontinuance application full and complete information with regard to the environmental impact of the proposed abandonment or discontinuance in compliance with 49 CFR part 1106 and § 1105.12(b) and (c). If certain information required by the environmental regulations duplicates wholly or in part information required elsewhere in an abandonment or discontinuance application, the environmental information requirements may be met by a direct and specific reference to the location of the required information elsewhere in the abandonment or discontinuance application. Environment information should not be submitted for those cases covered by the Milwaukee Railroad Restructuring Act, Pub. L. 96-101 (1979).

(g) *Passenger service.* If passenger service is provided on the line, submit a statement of whether appropriate steps have been taken for discontinuance pursuant to 49 U.S.C. 10908 and 10909.

(h) All testimony considered necessary to support the proposal shall be filed with the application in the form of verified statements.

(i) *Verification.* The original application shall be executed and verified in the form set forth below by an officer of the carrier having knowledge of the facts and matters relied upon.

VERIFICATION

State of ———————— ss. County of ————————

———————— (Name of affiant) makes oath and says that he is the ———————— (Title of Affiant) of the ———————— (Name of applicant) applicant herein; that he has been authorized by the applicant (or as appropriate, a court) to verify and file with the Interstate Commerce Commission the foregoing application in AB- ———————— (Sub-No. ————————); that he has carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that he has knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of his knowledge, information, and belief.

————————

(Signature)

Subscribed and sworn to before me ——— in and for the State and County above named, this ——— day of ————, 19—.

————————

My commission expires ————————

[44 FR 73106, Dec. 17, 1979. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 53 FR 49668, Dec. 9, 1988]

§ 1152.42 Responses to the application.

(a) *Filing.* The original and 10 copies of responses to the application shall be filed with the Commission within 30 days of the filing of the application. A copy of each response shall be concurrently served on the carrier and Bankruptcy Court. A certificate of service shall accompany the response.

(b) *Verification.* Each response shall be verified.

State of ———————— ss. County of ————————

———————— (Name of affiant) makes oath and says that he has been authorized to verify and file with the Interstate Commerce Commission the foregoing response in AB- ———————— (Sub-No. ————————), that he has carefully examined all of the statements in the response; that he has knowledge of the facts and matters relied upon; and that all representations set forth are true and correct to the best of his knowledge, information, and belief.

————————

(Signature)

Subscribed and sworn to before me ——— in and for the State and County above named, this —— day of ————, 19—.

————————

My commission expires ————————

(c) *Warning.* The Commission will not consider untimely, unserved, or unverified responses.

[44 FR 73106, Dec. 17, 1979. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 53 FR 19302, May 27, 1988]

§ 1152.43 Report of the Commission.

The Commission, or designee thereof, shall prepare a report for the Bankruptcy Court within the time allotted by the Court pursuant to 11 U.S.C. 1170. The Commission report shall rely on the application and responses.

[44 FR 73106, Dec. 17, 1979. Redesignated at 47 FR 49581, Nov. 1, 1982]

Subpart F—Exempt Abandonments and Discontinuances of Service and Trackage Rights

§ 1152.50 Exempt abandonments and discontinuances of service and trackage rights.

(a)(1) A proposed abandonment or discontinuance of service or trackage rights over a railroad line is exempt from the provisions of 49 U.S.C. 10903-10905 if the criteria designated in this section are satisfied.

(2) Whenever the Commission determines a proposed abandonment to be exempt from the requirements of 49 U.S.C. 10903-10905, whether under this section or on the basis of the merits of an individual petition, the provisions of § 1152.27 as they relate to exemption proceedings shall be applicable.

(b) An abandonment or discontinuance of service or trackage rights is exempt if the carrier certifies that no local traffic has moved over the line for at least 2 years and any overhead traffic on the line can be rerouted over other lines and that no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The complaint must allege (if pending) or prove (if decided) that the carrier has imposed an illegal embargo or other unlawful impediment to service.

(c) The Commission has found:

(1) That its prior review and approval of these abandonments and discontinuances is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a; and

(2) That these transactions are of limited scope and continued regulation is unnecessary to protect shippers from abuse of market power. 49 U.S.C. 10505.

A notice must be filed to use this class exemption. The procedures are set out in § 1152.50(d). This class exemption does not relieve a carrier of its statutory obligation to protect the interests of employees. 49 U.S.C. 10505(g)(2) and 10903(b)(2). This also does not preclude a carrier from seeking an exemption of a specific abandonment or discontinuance that does not fall within this class.

(d) *Notice of exemption.* (1) At least 10 days prior to filing a notice of exemption with the Commission, the railroad seeking the exemption must notify in writing (i) the Public Service Commission (or equivalent agency) in the State(s) where the line will be abandoned or the service or trackage rights discontinued, (ii) the United States Department of Defense (Military Traffic Management Command); (iii) the National Park Service, Recreation Resources Assistance Division, (iv) the National Park Service, Land Resources Division, and (v) the U.S. Department of Agriculture, Chief of the Forest Service. The notice shall name the railroad, describe the line involved, indicate the exemption procedure is being used, and include the approximate date that the notice of exemption will be filed with the Commission. The notice shall include the following statement "Based on information in our possession, the line (does) (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it."

(2) The railroad must file a verified notice using its appropriate abandonment docket number and subnumber (followed by the letter "X") with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The notice shall include the proposed consummation date, the certification required in § 1152.50(b), the information required in § 1152.22(a)(1) through (4) and (8), and (e)(5), the level of labor protection, and a certificate that the notice requirements of §§ 1152.50(d)(1) and 1105.11 have been complied with.

(3) The Commission, through the Director of the Office of Proceedings, shall publish a notice in the FEDERAL REGISTER within 20 days after the filing of the notice of exemption. Petitions to stay the effective date of the notice on other than environmental or historic preservation grounds must be filed within 10 days of the publication. Petitions to stay the effective date of the notice on environmental or historic preservation grounds may be filed at any time but must be filed sufficiently in advance of the effective date in order to allow the Commission to consider and act on the petition before the notice becomes effective. Petitions for reconsideration, comments regarding environmental, energy and historic preservation matters, and requests for public use conditions under 49 U.S.C. 10906 and 49 CFR 1152.28(a)(2) must be filed within 20 days after publication. The exemption will be effective 30 days after publication, unless stayed. If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio* and the Commission shall summarily reject the exemption notice.

(4) In out-of-service rail line exemptioin proceedings under 49 CFR 1152.50, the Commission, on its own motion, will stay the effective date of individual notices of exemption when an informed decision on pending environmental and historic preservation issues cannot be made prior to the date that the exemption authority would otherwise become effective.

(5) A request to implement interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29 should be filed with the Commission and served on the railroad within 10 days of publication of the notice of exemption in the FEDERAL REGISTER. A notice or decision to all parties will be issued if use of the exemption is made subject to environmental, energy, historic preservation, public use and/or interim trail use and rail banking conditions.

(6) To address whether the standard labor protective conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979), adequately protect affected employees, a petition for partial revocation of the exemption under 49 U.S.C. 10505(d) must be filed.

(e) *Abandonment petitions for exemption.* Whenever a petitioner intends to seek abandonment authority through a petition for exemption, a copy of the petition shall be served upon the persons receiving notices of exemption under § 1152.50(d). The petition must include the following statement: "Based on information in our possession, the line (does) (does not) contain federally granted right-of-way. Any documentation in petitioner's possession will be made available promptly to those requesting it."

[49 FR 17003, Apr. 23, 1984, as amended at 50 FR 8335, Mar. 1, 1985; 50 FR 24649, June 12, 1985; 51 FR 197, Jan. 3, 1986; 51 FR 16853, May 7, 1986; 51 FR 42098, Nov. 21, 1986; 52 FR 46775, Dec. 10, 1987; 52 FR 48443, Dec. 22, 1987; 54 FR 9823, Mar. 8, 1989; 55 FR 31600, 31601, Aug. 3, 1990]

APPENDIX

AB No.	Name of Carrier
1	Chicago & North Western Transportation Co.
2	Louisville & Nashville RR. Co.
3	Missouri Pacific RR. Co.
4	Cadillac & Lake City Ry. (debtor).
5	Penn Central Transportation Co. (debtor).
6	Burlington Northern, Inc.
7	Chicago, Milwaukee, St. Paul & Pacific Ry. Co.
8	Denver & Rio Grande Western RR. Co.
9	St. Louis-San Francisco Ry. Co.
10	Norfolk & Western Ry. Co.
11	Chicago & Eastern Illinois RR.
12	Southern Pacific Transportation Co.
13	Holton Inter-Urban Ry. Co.
14	Northwestern Pacific RR. Co.
15	Petaluma & Santa Rosa RR. Co.
16	San Diego & Arizona Eastern Ry. Co.
17	Visalia Electric RR. Co.
18	The Chesapeake & Ohio Ry. Co.
19	The Baltimore & Ohio RR. Co.
20	The Texas & Pacific Ry. Co.
21	Abilene & Southern Ry. Co.
22	Texas-New Mexico Ry. Co.
23	Texas Pacific-Missouri Pacific Terminal RR. of New Orleans.
24	Fort Worth Belt Railway Co.
25	The Weatherford Mineral Wells & Northwestern Ry. Co.
26	Southern Ry. Co.
27	The Alabama Great Southern RR. Co.
28	Central of Georgia RR. Co.
29	The Cincinnati, New Orleans & Texas Pacific RR. Co.
30	Georgia Southern & Florida Ry. Co.
31	Grand Trunk Western RR. Co.
32	Boston & Maine Corp. (debtor).
33	Union Pacific RR. Co.
34	St. Joseph & Grand Island RR. Co.
35	Los Angeles & Salt Lake RR. Co.
36	Oregon Short Line RR. Co.
37	Oregon-Washington Railroad & Navigation Co.
38	Pennsylvania & Atlantic RR. Co.
39	St. Louis Southwestern Ry. Co.
40	St. Louis Southwestern Ry. Co. of Texas.
41	Flint Hills Ry., Inc.
42	Aroostock Valley RR. Co.
43	Illinois Central Gulf RR. Co.
44	Lehigh Valley RR. Co. (debtor).
45	Albany Port District Commission.
46	Chicago, Rock Island & Pacific RR. Co.
47	Duluth Union Depot and Transfer Co.
48	Erie Lackawanna Ry. Co.
49	The Ann Arbor RR. Co.
50	Reading Co. (debtor).
51	Oregon Electric Ry. Co.
52	The Atchison, Topeka & Santa Fe Ry. Co.
53	The Kansas & Missouri Railway and Terminal Co.
54	Georgia RR.: The Western Ry. of Alabama; Atlanta & West Point RR. Co.; Milledgeville Ry. Co.; Georgia Railroad & Banking Co.
55	Seaboard Coast Line RR. Co.
56	The City of Maryville & The Maryville Housing Authority.
57	Soo Line RR. Co.
58	Reader RR.
59	Chattahoochee Valley Ry. Co.
60	Morehead & North Fork RR. Co.
61	Spokane, Portland & Seattle Ry. Co.
62	Marinette, Tomahawk & Western RR. Co.
63	Midway RR. Co.
64	Chattanooga Station Co.
65	St. Johnsbury & Lamoille County RR. Co.
66	Minneapolis, Anoka & Cuyuna Range RR. Co.
67	West Pittston-Exeter RR. Co.
68	Lake Superior & Ishpeming RR. Co.
69	Western Maryland Ry. Co. and (The Baltimore and Cumberland Valley RR.)
70	Florida East Coast Ry. Co.
71	The Baltimore & Annapolis RR. Co.
72	Sacaramento Northern Ry.
73	Cincinnati Union Terminal Co.
74	Pennsylvania-Reading Seashore Lines.
75	Richmond Terminal Co.
76	Texas Central RR. Co.
77	Bangor & Aroostook RR. Co.
78	Fonda, Johnstown & Gloversville RR. Co.
79	Central RR. Co. of New Jersey.
80	Allentown Terminal RR. Co.
81	Norwood & St. Lawrence RR. Co.
82	The Marianna & Blountstown RR.
83	Maine Central RR. Co.
84	Illinois Terminal RR. Co.
85	The Union Terminal Co.
86	Cheswick and Harmar RR. Co.
87	Susquehanna Connecting RR. Co.
88	Bessemer & Lake Erie RR. Co.
89	Alameda Belt Line.
90	Caton & Loudon Ry. Co.
91	Central Illinois Light Co.
92	The Salt Lake City Union Depot & RR. Co.
93	Peoria Terminal Co.
94	El Paso Union Passenger Depot Co.
95	Hollis & Eastern RR. Co.
96	Bellefonte Central RR. Co.
97	The Texas Mexican Ry. Co.
98	Claremont & Concord Ry. Co.
99	Arkansas Western Ry. Co.
100	The General State Authority (Commonwealth of Pennsylvania).
101	Duluth, Missabe & Iron Range Ry. Co.
102	Missouri-Kansas-Texas RR. Co.
103	Kansas City Southern Ry. Co.
104	East Tennessee & Western North Carolina RR. Co.
105	Western Pacific RR. Co.
106	The Colorado & Wyoming Ry. Co.
107	Kalamazoo, Allegan & Grand Rapids RR. Co.
108	Texas Export RR. Co.
109	Quanah, Acme & Pacific Ry. Co.

APPENDIX—Continued

AB No.	Name of Carrier
110	Nezperce RR. Co.
111	Detroit, Toledo & Ironton RR. Co.
112	Great Plains Ry. Co.
113	Edgemoor & Manetta RR.
114	Clarendon & Pittsford RR. Co.
115	Lehigh & New England Ry. Co.
116	City of Hillsboro (for Oregon Electric Ry.).
117	Elgin, Joliet & Eastern Ry. Co.
118	Albany Passenger Terminal Co.
119	The Fort Worth & Denver Ry. Co.
120	Chicago & Western Indiana RR. Co.
121	Spokane International RR.
122	Terminal RR. Association of St. Louis.
123	Chicago Produce Terminal Co.
124	Waterloo RR. Co.
125	Norfolk Southern Ry. Co.
126	Wellsville, Addison & Galeton RR. Co.
127	Central Iowa Transportation Cooperative.
128	East Washington RR. Co.
129	Twin Branch RR. Co.
130	Cotton-Plant Fargo Ry. Co.
131	Yakima Valley Transportation Co.
132	The Akron & Barberton Belt RR. Co.
133	Warren and Quachita Valley Ry. Co.
134	State of Vermont (Agency of Transportation, Dept. of Rail, Waterway & Motor Carriers).
135	Condon, Kingria & Southern RR. Co.
136	Chicago South Shore & South Belt RR. Co.
137	Augusta RR. Co.
138	McCloud River RR. Co.
139	Providence & Worcester RR. Co.
140	Hoboken Shore RR. Co.
141	Kanawha Central RR. Co.
142	New Orleans Lower Coast RR. Co.
143	Jacksonville Terminal Co.
144	Tidewater Southern Ry. Co.
145	Carrollton RR. Co.
146	Columbia Newberry & Laurens RR. Co.
147	Gainesville-Midland RR. Co.
148	Durham & Southern RR. Co.
149	Winston-Salem Southbound RR. Co.
150	Highpoint Thomasville and Denton RR. Co.
151	Haysi RR. Co.
152	Clinchfield RR. Co.
153	Mount Hood Ry. Co.
154	Texas, Oklahoma & Eastern RR. Co.
155	DeQueen and Eastern RR. Co.
156	Delaware & Hudson Ry. Co.
157	Richmond, Frederick, Potomac RR. Co.
158	Pittsburgh & Lake Erie RR. Co.
159	Monongahela Ry. Co.
160	Montour RR. Co.
161	Pittsburgh, Chartiers & Youghiogheny RR. Co.
162	Youngstown & Southern RR. Co.
163	Raritan River RR. Co.
164	Texas South Eastern RR. Co.
165	East Troy Municipal RR. Co.
166	Vermont Ry. Co.
167	Conrail (Consolidated Rail Corp.)
168	Lake Erie & Eastern RR. Co.
169	Toledo, Angola & Western RR. Co.
170	Sunset Ry. Co.
171	Fairport, Painesville & Eastern Ry. Co
172	Fort Wayne Union Ry. Co.
173	Detroit, Toledo Shore Line RR. Co.
174	Central Vermont Ry. Co.
175	Duluth, Winnipeg & Pacific RR. Co.
176	Valley & Siletz RR. Co.
177	Minnesota, Dakota & Western Ry. Co.
178	Hillsdale County Ry. Co.
179	The Apache Ry. Co.
180	The Lowville & Beaver RR. Co.
181	East Camden & Highland RR. Co.
182	The Youngstown and Northern RR. Co.
183	Union RR. Co.
184	McKeesport Connecting RR. Co.
185	The Lake Terminal RR. Co.
186	The Newburgh & South Shore Ry. Co.
187	Northhampton & Bath RR. Co.
188	Johnstown & Stony Creek RR. Co.
189	Connellsville & Monongahela Ry. Co.
190	Carbon County Ry. Co.
191	Colorado Southern Ry. Co.
192	Birmingham Southern RR. Co.
193	Canton RR. Co.
194	Grafton & Upton RR. Co.
195	The Mobile & Gulf RR. Co.
196	Atlanta & Saint Andrews Bay Ry. Co.
197	Cedar Rapids and Iowa Ry. Co.
198	Chicago & Illinois Midland Ry. Co.
199	The Long Island RR. Co.
200	Escanaba & Lake Superior RR. Co.
201	Minneapolis Northfield & Southern Ry. Co.
202	Montpelier & Barre RR. Co.
203	Mississippi Ry. Co.
204	Cape Fear Ry. Co.
205	Washington, Idaho & Montana RR. Co.
206	The Louisiana & Pine Bluff Ry. Co.
207	Arkansas & Louisiana Missouri Ry. Co.
208	Wolfeboro Rail Road Co., Inc.
209	Brooklyn Eastern District Terminal
210	New York, Susquehanna & Western RR. C
211	Rahway Valley RR. Co.
212	Kansas City Public RR.
213	Canadian Pacific
214	Vanderburg County RR. Co.
215	New Jersey, Indiana, Illinois RR. Co.
216	Norfolk & Franklin & Danville Ry. Co.
217	South Brooklyn Ry. Co.
218	Livonia, Avon & Lakeville RR. Co.
219	New York Dock Ry. Co.
220	Skaneateles Short Line RR. Co.
221	Toole Valley Ry. Co.
222	San Francisco Belt RR.
223	Narragansett Pier-RR. Co. Inc.
224	Port Authority of New York & New Jers
225	Portland Traction Co.
226	The Toledo Terminal RR. Co. (Toledo RR
227	Wheeling & Lake Erie Ry. Co.—WLE.
228	Chelatchie Prairie Railroad, Inc.—CR.
229	Praire Central Ry. Co.
230	Washington County RR. Co.
231	Staten Island Railroad Corporation—SIRC.
232	Kansas Southwestern Ry. Co.
233	Fresno Interurban Ry. Co.
234	Prairie Trunk Ry. Co.
235	Butte Anaconda Pacific Ry. Co.
236	Camas Prairie RR. Co.
237	Pend Orville Valley RR., Inc.
238	Port Everglades Ry.
239	Sierra RR. Co.
240	Cambria and Indiana, RR. Co.
241	Arcata and Mad River RR. Co.
242	Maryland and Pennsylvania RR. Co.
243	Virginia Blue Ridge Ry.
244	Oklahoma, Kansas and Texas RR. Co.
245	Oregon, Pacific and Eastern RR. Co.
246	Yreka Western RR. Co.
247	Alabama Southern RR. Co., Inc.
248	Bolivar Southern RR. Co.

APPENDIX—Continued

AB No.	Name of Carrier
249	The Mobile & Gulf RR. Co.
250	Cadiz RR. Co.
251	Louisiana Midland Ry. Co.
252	Northern Missouri RR. Co.
252	Bear Creek Mainline RR.
254	Providence & Worcester RR. Co.
255	Frankport & Cincinnati RR.
256	Ottumwa Connecting RR.
257	Sand Springs Ry. Co.
258	Central California Traction Co.
259	Vermont Ry. Inc.
260	Rarus Ry. Corp.
261	Staten Island Rapid Transit Operating Authority.
262	Norfolk and Portsmouth Belt Line RR. Co.
263	Staten Island Ry. Corp.
264	Vermont & Massachusetts RR. Co.
265	State of Vermont and Vermont Ry., Inc.
266	California Western RR. Co.
267	Vandalia RR. Co.
268	Portland Terminal Co.
269	Iowa Terminal RR. Co.
270	Sumpter & Choctaw Ry. Co.
271	Chicago & Illinois Midland Ry. Co.
272	Morristown & Erie Ry. Inc. 273
273	Camino, Placerville & Lake Tahoe RR. Co.
274	Chesapeake Western Ry.
275	Fourteen—Eleven Corp.
276	Nashville and Ashland City RR.
277	West Virginia Northern RR. Inc.
278	The Eastern Shore RR. Inc.

[41 FR 48520, Nov. 4, 1976. Redesignated at 47 FR 49581, Nov. 1, 1982. Redesignated at 48 FR 54241, Dec. 1, 1983, and amended at 51 FR 33613, Sept. 22, 1986]

PART 1153—TRAIN OR FERRY DISCONTINUANCE OR CHANGE OF OPERATION

Subpart A—Procedures Under 49 U.S.C. 10908

Sec.

1153.1 Scope of rules.
1153.2 Notice of change or discontinuance.
1153.3 Information required with notice.
1153.4 Procedures governing proceedings on the proposed discontinuance or change.

Subpart B—Procedures Under 49 U.S.C. 10909

1153.5 Scope of rules.
1153.6 Procedures on a petition.
1153.7 Rules pertaining to the hearing.

AUTHORITY: 5 U.S.C. 553 45 U.S.C. 561, and 49 U.S.C. 10321, 10908, 10909.

SOURCE: 48 FR 24386, June 1, 1983, unless otherwise noted.

Subpart A—Procedures Under 49 U.S.C. 10908

§ 1153.1 Scope of rules.

These rules govern the proposal of a carrier to discontinue or change train or ferry service which operates between two or more States.

§ 1153.2 Notice of change or discontinuance.

A separate notice for each unrelated proposal to discontinue or change train or ferry service shall be:

(a) Filed with the Commission 45 days before the discontinuance or change is to be effective

(b) Concurrently mailed to the chief executive officer and railroad regulatory body of each State in which the train or ferry is operated, and

(c) Posted in a conspicuous place in each station, depot, passenger car, or facility served by the train or ferry. This notice shall contain the following information:

(1) Exact corporate name and address of the carrier.

(2) The train or ferry number and name or other description of the train or ferry which is the subject of a discontinuance or change; the name of each station, depot, or facility affected by the proposal; and the termini between which the train or ferry operates.

(3) The date when the proposal will be effective.

(4) That persons wishing to object to the proposal should notify the Commission at Washington, DC of their objections and their reasons for opposition at least 30 days before the effective date of the change.

(5) The notice shall be not less than 8½x11 inches and the wording in not smaller than 12-point type. The words "Notice of proposed change (or discontinuance, if appropriate) of service" shall appear in large bold-face type near the top.

§ 1153.3 Information required with notice.

A "Statement Regarding Proposed Discontinuance or Changes of Train or Ferry Service" shall be filed at the Commission along with each separate notice. The statement shall contain the following either in the statement itself or in attached exhibits:

(a) Name and address of counsel or officer to whom correspondence should be addressed.

(b) Complete description of the present service and the proposed change, including the effect on each train station, depot, or other facility affected.

(c) The reasons for the proposal.

(d) Description of alternative common carrier service available in the area described in the notice. If none, so state.

(e) A brief summary of the use of the trains or ferries involved for the last calendar year, and for the current year to the extent available. If information is not submitted, an explanation for the omission is required.

(f) The financial results of the operations described in paragraph (e), above.

(g) A copy of the carrier's balance sheet as of the latest available date and of its income statement for the last calendar year, and for the part of the current year for which such information is available. If on file with the Commission, this information may be incorporated by reference.

(h) A map showing the geographic area and route involved in the proposal.

(i) A certification that pursuant to § 1153.2 a copy of the notice has been posted and that the notice and "Statement Regarding Proposed Discontinuance or Change of Train or Ferry Service" have been mailed.

(j) Either attestation and verification as required by § 1104.4 or an affirmation or declaration as required by § 1104.5.

§ 1153.4 Procedures governing proceedings on the proposed discontinuance or change.

(a) *Protests.* Interested persons opposed to a proposed discontinuance or change of operations shall file with the Commission an original of their protest by telegram, letter, or other writing. The protest shall identify the protestant and the carrier involved, state the interest of the protestant, and the grounds for opposition. The protest shall be filed with the Commission no later than 30 days before the proposed change is scheduled to go into effect.

(b) *Intervention.* Intervention in any proceeding will be allowed in accordance with § 1113.7.

(c) *Notice of proceeding.* After the period for protests ends, the Commission will give notice to the carrier(s) involved, the chief executive officer of each State in which the train or ferry is operated, and any other interested parties of record as to whether a proceeding investigating the discontinuance or change will be instituted. If a proceeding is instituted, the Commission may order continuance of the train or ferry service pending completion of the proceeding.

(d) *Reconsideration of decision as to whether to investigate.* Petitions for reconsideration of the Commission's decision as to whether to investigate the proposed change or discontinuance shall be filed with the Commission within 10 days after the date of service of the Commission's decision. Interested persons may reply within 15 days after the date of service of the Commission's decision. If an order is desired requiring continuance of the service pending the proceeding the petition shall be filed with the Commission 15 days prior to the date the discontinuance is to take effect and shall contain a request for expedited handling.

Subpart B—Procedures Under 49 U.S.C. 10909

§ 1153.5 Scope of rules.

These rules govern petitions filed by a carrier under 49 U.S.C. 10909 to discontinue or change train or ferry service which is operated entirely within one State.

§ 1153.6 Procedures on a petition.

(a) *Contents.* Petitions filed under 49 U.S.C. 10909 shall contain the information in § 1153.2(a) and § 1153.3(a)-(j). Additionally, the following information shall be provided:

(1) The date on which a request to change or discontinue the transportation was filed with the appropriate State authority.

(2) Identification of the State authority with which the petition was filed.

(3) Description of the action, if any, taken by the State authority on the petition, including a copy of the record of the State proceeding, if available, or a copy of the State law prohibiting the action.

(b) *Notice of the petition.* No later than the date on which a carrier files its petition, it shall serve copies of its entire petition on the State Governor, the State authority which denied or failed to act on the carrier's request, and on all parties of record in the proceeding at the State level. *See*, in addition, § 1104.12. Copies of the State record need not be furnished to the Governor, State agency, or other parties of record.

§ 1153.7 Rules pertaining to the hearing.

Notice of the hearing. If a hearing is requested by any interested party in opposition in the State proceeding, the Commission shall give all interested parties at least 30 days' notice of the hearing to be conducted in the State in which the train or ferry is operated.

PART 1154—DETERMINATION OF AVOIDABLE LOSSES

Sec.

1154.1	Scope of rules in this part.
1154.2	Definitions.
1154.3	Information required with application.
1154.4	Required exhibits.
1154.5	Form and style.
1154.6	Procedure.

Authority: 49 U.S.C. 10321 and 10905; 5 U.S.C. 559.

Source: 38 FR 12744, May 15, 1973, unless otherwise noted. Redesignated at 47 FR 49582, Nov. 1, 1982.

§ 1154.1 Scope of rules in this part.

The rules in this part govern procedure to be followed by the National Railroad Passenger Corp. and a railroad subject to title 49, subtitle IV, chapter 105, when an impasse is reached between the two relative to the final settlement price to be paid by the railroad in consideration of being relieved of all of its responsibility as a common carrier of passengers by rail in intercity rail passenger service pursuant to the Rail Passenger Service Act of 1970. Either the National Railroad Passenger Corp. or the railroad shall apply to the Commission for a determination of the avoidable loss with respect to the subject intercity rail passenger service. The burden of proof of avoidable loss shall rest with the railroads, and the procedure provided hereinafter shall be followed.

[38 FR 12744, May 15, 1973. Redesignated and amended at 47 FR 49582, Nov. 1, 1982]

§ 1154.2 Definitions.

(a) Avoidable costs are those operating expenses, rents, and taxes listed in the Uniform System of Accounts (title 49 CFR parts 1200-1201) which can be demonstrated to have been required for the provision of intercity rail passenger service in 1969, which would not have been incurred had such service not been performed.

(b) Avoidable loss is the excess of avoidable costs of providing intercity rail passenger service over the nonretainable revenues from the same service, pursuant to section 102(6) of the Rail Passenger Service Act of 1970.

(c) Nonretainable revenues are the railroad's 1969 revenues attributable to its intercity rail passenger service, which it would not have received had such service not been performed.

(d) Solely related expenses are the operating expenses, rents, and taxes which are incurred only for providing a specific service.

(e) Common expenses are those operating expenses, rents, and taxes which are not solely related to one service but are required to provide more than one service.

(f) In determining whether a service is commuter or other short-haul service in metropolitan and suburban areas, within the meaning of section 102(3)(A) of the Rail Passenger Service Act of 1970, the Commission will consider the following features, among others:

(1) The passenger service is primarily being used by patrons traveling on a regular basis, either within a metropolitan area or between a metropolitan area and its suburb;

(2) The service is usually characterized by operations performed at morning and evening peak periods of travel;

(3) The service usually honors commutation or multiple ride ticket at a fare reduced below the ordinary coach fare and carries the majority of its patrons on such a reduced fare basis;

(4) The service makes several stops at short intervals either within a zone or along the entire route;

(5) The equipment used may consist of little more than ordinary coaches;

(6) The service should not extend more than 100 miles at the most, except in rare instances; although service over shorter distances may not be commuter or short haul within the meaning of the said act of 1970.

(g) Intercity passenger service is all passenger services other than (1) commuter and other short-haul service in metropolitan and suburban areas, usually characterized by reduced fare, multiple-ride and commutation tickets, and by morning and evening peak period operations, and (2) auto-ferry service characterized by transportation of automobiles and their occupants where contracts for such service have been consummated prior to enactment of the Rail Passenger Service Act of 1970.

§ 1154.3 Information required with application.

Application required under § 1154.1 shall include the following information set forth in the sequence indicated:

(a) Identification of the applicant showing:

(1) Full and correct name of the applicant and the business address of applicant (street and number, city, county, and State).

(2) The name, title, and business address of the officer or officers to whom correspondence with respect to the application should be addressed.

(b) Information respecting the terms and conditions of the contract pursuant to which the proposed transfer of intercity rail passenger service is to be effected, including the manner and terms of payment of the consideration.

(c) Information respecting the route, termini, and mileage of the lines to be transferred.

(d) Statements, in summary form, showing the applicant's calculation, for loss of all intercity rail passenger the calendar year 1969, of the avoidable service and/or that portion of such service that was operated over routes between points on the basic system, supported by the exhibits required by § 1154.4 and presented as follows:

(1) Solely related intercity passenger-train costs.

(2) Common expenses apportioned to intercity passenger service.

(3) Avoidable intercity passenger costs.

(4) Nonretainable revenues.

(5) Added expenses of hauling carrier personnel, material, and company mail.

(6) Avoidable loss.

§ 1154.4 Required exhibits.

There shall be filed with the original application and as a part thereof, the following exhibits:

(a) As exhibit (A) a statement of the fully distributed passenger service deficit of the railroad as reported to the Commission for the year ending December 31, 1969. This statement shall be supplied in the same format provided in Schedule 300, Income Account for the Year as prescribed in Rail Annual Report Form A.

(b) As exhibit (B) a statement showing total and avoidable operating expenses, rents, and taxes by primary account for (1) all intercity rail passenger service and/or (2) that portion of such service that was operated over routes between points on the basic system, presented in the format attached hereto and identified as appendix B.

(c) As exhibit (C) a statement setting forth the method used and the justification, for each primary account, of the avoidable expenses reported in exhibit (B) as described above. Avoidable intercity expenses shall be supported by identification of specific positions, equipment, facilities, and materials which would not be required upon discontinuance of the intercity passenger service.

(d) As exhibit (D) a statement of revenues earned in 1969 as a result of providing intercity passenger service which could not have been retained by the railroad after the discontinuance of such service. This statement shall exclude revenues which could have been retained even though intercity rail passenger service were discontinued. If the 200-percent formula is being relied on, data required in this exhibit should be furnished for that portion of the service that was performed over routes between the points on the basic system. This data shall be supplied in the same format provided in Schedule 310, Railway Operating Revenues, as prescribed in Rail Annual Report Form A.

(e) As exhibit (E) a statement supporting determination of nonretainable revenues submitted as exhibit D.

(f) As exhibit (F) a listing, by position classification, of the number of positions involved exclusively or in part in intercity passenger service during the month of December 1969. These positions shall be listed and identified in the same format as prescribed for ICC Wage Statistics, forms A and B. In addition, positions involved exclusively in intercity passenger service shall be separated from positions involved in part in intercity passenger service. The account to which wages are charged and the average annual wage shall also be shown for each position. In addition, for each position involved only in part in intercity passenger service an estimate (stated as a percent) of the portion of time assigned to intercity passenger service shall be provided. If the 200-percent formula is being relied on, a similar showing should be furnished giving the above information as to that portion of such service that was performed over routes between points on the basic system.

(g) As exhibit G—an estimate of what the added expenses would have been for hauling carrier personnel, material, and company mail if no passenger service had been provided during 1969.

§ 1154.5 Form and style.

The application and exhibits shall conform with 49 U.S.C. 1104.4.

[38 FR 12744, May 15, 1973. Redesignated and amended at 47 FR 49582, Nov. 1, 1982]

§ 1154.6 Procedure.

(a) There shall be filed with the Secretary of the Commission, Washington, DC, the original application, and 10 copies thereof for the use of the Commission. The original application shall be signed in ink by the applicant, if an individual, by all partners, if a copartnership, and if a corporation, association, or other similar form of organization, by its president, vice president, auditor, comptroller, or other executive officer having knowledge of the matters therein contained and duly designated for that purpose by the applicant, and shall be made under oath. The application shall show that the affiant is duly authorized by the applicant to verify and file the same. Each copy shall conform in all respects to the original and shall be complete in itself except that the signature in the copies may be stamped or typed and notarial seal omitted.

[38 FR 12744, May 15, 1973. Redesignated at 47 FR 49582, Nov. 1, 1982, and amended at 53 FR 19302, May 27, 1988]

PART 1155—STANDARDS FOR DETERMINING RAIL SERVICE CONTINUATION SUBSIDIES

Sec.

1155.1 Purpose of the standards.
1155.2 Definitions of terms used in the standards.
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1155.7 Calculation of avoidable costs and management fee.
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1155.9 Return on the value of rail properties.

APPENDIX I—FORMAT FOR PRESENTATION OF SUBSIDY ESTIMATE
APPENDIX II—FORMAT FOR FINANCIAL STATUS REPORTS

AUTHORITY: 49 U.S.C. 10321 and 10905; 5 U.S.C. 559.

SOURCE: 43 FR 1692, Jan. 11, 1978, unless otherwise noted. Redesignated at 47 FR 49582, Nov. 1, 1982.

§ 1155.1 Purpose of the standards.

(a) The 3R Act established a method of preserving rail service that would otherwise be discontinued as a result of the restructuring process developed by the final system plan. Section 304(c)(2) of the 3R Act, as amended, provides that no rail service or properties may be discontinued or abandoned if a financially responsible person or government entity offers a subsidy which: (1) Covers the difference between the carrier's revenues attributable to such rail properties and the carrier's avoidable costs of providing rail service on such properties, together with a reasonable management fee, and (2) includes a reasonable return on the value of such properties. Further, the person offering the subsidy shall designate the operator of the continued rail service.

(b) RSPO was directed to develop and publish standards to determine "revenues attributable to the rail properties," the "avoidable costs of providing service," a "reasonable return on the value," and a "reasonable management fee" as those phrases are used in section 304 of the 3R Act as amended. These standards (49 CFR part 1155), developed by RSPO and referred to as the "Regional Subsidy Standards," are applicable only for subsidized freight operations over those rail properties of the railroads in reorganization which were not conveyed to ConRail. (Methods governing the calculation of subsidies for rail properties of other railroads as well as those properties conveyed to ConRail are covered by a separate set of standards (49 CFR part 1152) and are referred to as the "National Subsidy Standards.")

(c) These standards intend that parties to a subsidy agreement utilize arms-length negotiation to the fullest extent possible in establishing and executing a subsidy operating agreement. The standards presented here develop the methodologies for:

(1) Calculating a subsidy estimate to be used as a basis for a subsidy offer under section 304(c)(2) of the 3R Act, as amended,

(2) Determining the actual revenues and costs of a subsidized operation during the subsidy year, and

(3) Establishing a return on the value of the properties used in continuing the rail service.

Parties may agree in arms-length negotiations to provisions which modify these standards, subject to review of such modifications by RSPO. RSPO would not expect to disapprove variations from the standards which are the product of arms-length negotiations and which are shown to be reasonable in the light of pertinent facts and circumstances. When an agreement has been reached, a copy shall be filed promptly with RSPO for its review.

(d) In brief, the standards describe the method for establishing a subsidy estimate, the basis for paying this estimate during the subsidy year, the method of calculating the actual subsidy during the subsidy period, and the provisions for adjusting for the difference between the estimated subsidy and the actual subsidy at the end of the subsidy period.

(e) For further information regarding these standards, persons may contact RSPO's Cost Evaluation Branch at 202-254-7552.

§ 1155.2 Definitions of terms used in the standards.

Unless otherwise required by the context, the following definitions apply:

Account means an account in the ICC's Uniform System of Accounts for Railroad Companies (49 CFR part 1201).

3R Act means the Regional Rail Reorganization Act of 1973, Pub. L. 93-236 (87 Stat. 985).

4R Act means the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210 (90 Stat. 31).

Base year means, for initial subsidy estimates, the year employed by the U.S. Railway Association in developing the final system plan (1973). For subsequent subsidy estimates, the base year is the year immediately preceding the year for which the subsidy estimate is being calculated.

Branch means a segment of a railroad that is not designated to be in the final system plan under the 3R Act, and that is the subject of a notice in writing of intent to discontinue service under section 304(a) of the 3R Act.

Form R-1 means a class I railroad's annual report filed with the ICC in accordance with the requirements of 49 U.S.C. 11145.

Form R-2 means a class II railroad's annual report filed with the ICC in accordance with the requirements of 49 U.S.C. 11145.

FRA means the Federal Railroad Administration, U.S. Department of Transportation.

GMA means General Managers Association of Chicago.

ICC means the Interstate Commerce Commission.

Just and Reasonable Charge means that a charge to an account shall not exceed an amount necessary to the honest and efficient operation and management of carrier business.

Notice of intent means a notice in writing of intent to discontinue service under section 304(a) of the 3R Act and notice of intent to abandon rail properties under section 304(b) of the 3R Act.

Person offering a subsidy means a shipper, a State, the United States, a local or regional transportation authority, or any responsible person offering a rail service continuation subsidy under section 304(c)(2)(A) of the 3R Act.

Rail Form A means the ICC's formula for use in determining rail freight service costs, statement 1F1-73.

Railroad means a railroad company, or the trustee or trustees of a railroad company, that gives a notice in writing of intent to discontinue service under section 304(a) of the 3R act, and, as the context requires, "railroad" may mean either the owner of rail properties over which subsidized service is or may be performed, or the operator of that service, or both.

RSPO means the Rail Services Planning Office established by section 205 of the 3R Act.

Subsidy year means any 12-month period for which a subsidy agreement is negotiated and in operation.

XX, when used in place of digits in a six-digit account number, means that all accounts containing the remaining four digits are to be used in the procedure being described. Example: "11-21-XX" refers to all salary and wage accounts for locomotives because "11" designates salaries and wages and "21" designates locomotives. Thus, "11-21-XX" includes all of the following accounts: 11-21-01, 11-21-40, 11-21-48, 11-21-39, and 11-21-99. Similarly, "XX-31-67" means all accounts containing "31" (train operations) and "67" (locomotive fuel).

[43 FR 1692, Jan. 11, 1978, as amended at 45 FR 19560, Mar. 26, 1980. Redesignated and amended at 47 FR 49582, Nov. 1, 1982]

§ 1155.3 Procedure for calculating a subsidy estimate.

(a) *Discontinuance notice and subsidy offer procedures*—(1) *Notice of discontinuance.* A railroad giving notice of intent to discontinue service on a branch shall provide an "Estimate of Subsidy Payment" and shall distribute copies of this estimate to the Director of RSPO, the Governor and railroad regulatory commission of each State within which the branch is located, and any other person upon request. The format of the "Estimate of Subsidy Payment" is prescribed in appendix I. The subsidy estimate shall be the difference between the revenues attributable to the rail properties and the avoidable costs of providing service on such rail properties, together with a reasonable management fee, plus a reasonable return on the value of the properties. Beginning with the week in which it gives notice of intent to discontinue service on the branch, pursuant to section 304(a)(1)(B) of the 3R Act, the railroad shall publish a copy of that notice of intent in a newspaper or newspapers of general circulation in the area encompassing the branch at least once a week for three consecutive weeks. Each railroad shall include in the required notices a statement of the address of the railroad's office within the State or States where interested persons may examine, during regular working hours, the materials and information upon which the subsidy estimate calculations were made. If the railroad so requests, examination of documents which disclose information concerning the nature, kind, quantity, destination, consignee, or routing of traffic may be restricted to the representative of the person offering a subsidy and then only if that representative agrees to keep that information confidential. A notice of intent to discontinue service, according to section 304(a)(1)(B) of the 3R Act, is not considered complete or given until the railroad has fulfilled these requirements.

(2) *Subsidy offer.* Persons wishing to subsidize rail service proposed for discontinuance shall:

(i) Communicate in writing with the railroad selected as the designated operator for the continuation of such service, offering to pay such operator the estimated subsidy amount, and

(ii) Communicate in writing with the trustee(s) or owner(s) of the railroad which owns the branch line, offering to pay a reasonable return on the value of the properties.

Upon the offer of a subsidy from a financially responsible person, discontinuance of the rail service or abandonment of the rail properties for which the subsidy is being offered is prohibited, pursuant to section 304(c)(2)(A) of the 3R Act. The parties are free to negotiate operating levels and reasonable variations from the standards, but when impasse occurs in the negotiations, the standards established here can be invoked.

Because USRA was not required to utilize the standards promulgated by RSPO as criteria for inclusion of branch lines in the final system plan, it is possible that a branch line could be excluded from the final system plan and yet generate revenues which exceed the costs as calculated under these standards. Therefore, RSPO has established the amount that a potential subsidizer must offer under section 304(c)(2)(A) as the amount computed by the subsidy estimate formula or $1.00, whichever is the greater.

(3) *Use of prior subsidy standards.* Even though these standards become effective January 1, 1978, parties to existing subsidy agreements may agree to continue to use the standards in effect prior to January 1, 1978, for the remainder of the current subsidy year.

(4) *Basis of estimated subsidy.* The estimated subsidy for the subsidy year immediately following conveyance in the reorganization process (ConRail start-up date) shall be calculated according to an interim formula based on data from 1973, which was the base year employed by USRA in developing the final system plan. This interim formula, using 1973 data, is to be employed only for the calculation of initial subsidy agreements; once a subsidy agreement is in place, subsequent years' estimates shall be based on data drawn from the preceding subsidy year. Estimates for revenues, on-branch avoidable costs, off-branch costs, a reasonable management fee, and a return on value shall be calculated according to the procedures in §§ 1155.3(b) through 1155.3(f) inclusive. The subsidy estimate procedure relies in many instances on the same formulas that are used to calculate the actual subsidy amount; the basic difference between the estimated and actual subsidy calculations is that the actual subsidy amount is calculated using data reflecting the experience of the subsidy year, while the estimate is based on anticipated operational results.

(b) *Estimated revenues.* Using base year data, estimated revenues shall include all sources of revenue and income prescribed as revenues and income attributable to the rail properties in the calculation of the actual subsidy, see § 1155.6.

(c) *Estimated on-branch costs.* On-branch cost estimates shall be separated and calculated as follows:

(1) *Routine maintenance of way and structures.* These expenses shall be estimated at $1,000 per year per mile of track on the branch for which the railroad is responsible for maintenance, unless the parties agree to a higher level.

(2) *Rehabilitation.* Rehabilitation costs shall not be included unless: (i) The track involved does not meet minimum FRA class I safety standards (49 CFR part 213), in which case, the railroad shall furnish a detailed estimate

of the costs to rehabilitate the track to FRA class I level with the notice of intent and provision to cover such costs shall be included in the subsidy agreements; or (ii) The potential subsidizer requests a level of service which requires expenditures for rehabilitation and makes such a request within 10 days after the date of notice of intent is filed, in which case the railroad shall furnish an estimate of the costs involved within 20 days after the date of that request. All such requests and estimates shall refer to specific projects for rehabilitation.

(3) *Maintenance of equipment excluding freight cars.* Estimates for maintenance of equipment shall be developed by applying base year data to the formula for calculating the actual maintenance of equipment expense, see § 1155.7(b). Unless the parties agree to a different base, the resulting average unit costs shall be applied to the branch base year service units to arrive at the estimate.

(4) *Transportation.* Transportation costs shall be estimated based on system average costs. The number of trips per year shall be based on the frequency of service performed at the time the notice is filed unless the parties agree to a different level. Labor costs for train crews shall be based on system average costs for each type of crew applied to the hours of service on the branch. The crew costs shall be classified into three major categories: Yard, local/way, and through. The straight time average costs per hour for each yard, local/way, or through train crew member shall be calculated for class I railroads by using the railroad's Employees, Service, and Compensation Report (Form B) for the base year. The calculation is made by adding together the straight time compensation and the constructive allowances, and dividing this total by the straight time hours acutually worked. This process would be repeated for each yard, local/way, and through train class of employee. For class II railroads, the straight time average cost per hour for each yard, local/way, or through train crew member shall be calculated in the same manner, using the railroad's payroll records for the base year. After the hourly rate is determined for each member, the cost per crew hour shall be calculated based on the exact size and consist of the crew currently serving the branch. The crew cost per hour is multiplied by the estimated hours that will be incurred in serving the branch during the subsidy period. The estimated direct crew costs must be increased to cover fringe benefits using the procedure specified in § 1155.7(c). The railroad shall also furnish estimates of costs for the remaining transportation accounts using § 1155.7(c) as a guide to their inclusion and basis of calculation.

(5) *General administrative expenses.* In exceptional circumstances, the railroad may be allowed to include general administrative expenses. Such expenses are allowable only if the size of the railroad's operation (measured in total mileage, gross revenues, gross ton-miles, or car-miles) is increased by more than 25 percent as a result of operating the subsidized service, or the individual line being operated under a subsidy agreement generates $10 million or more in gross revenues per annum. If the railroad foresees this increase, then estimates may be calculated for the accounts included under general administrative costs in § 1155.7(d).

(6) *Deadheading, taxi, and hotel costs.* Estimates for these costs shall be determined from base year data reflecting deadheading, taxi, and hotel costs incurred as a result of providing service to the branch line. The amounts under this section shall not be included under the wage accounts for yard conductors and brakemen, yard enginemen, or trainmen.

(7) *Overhead movement costs.* Estimates for these costs shall be determined from base year data reflecting overhead movement costs incurred as a result of providing service to the branch. The amounts shown shall be limited to transportation, equipment, and freight cars. The amounts shown under this section shall not be included under other sections of these standards.

(8) *Freight Car Costs.* Freight cars costs shall be estimated by a method consistent with the detailed procedures specified in § 1155.7(g).

(9) *Taxes.* Estimates for property taxes shall be based on the base year actual tax assessment, adjusted for tax rate changes; revenue taxes shall be based on the estimated revenue level.

(10) *Administrative Fee.* The estimated administrative fee shall be one percent of the revenues estimated under § 1155.3(b).

(11) *Casualty Reserve Account.* Estimates for this item shall be any payments mutually agreed to by the person offering the subsidy and the railroad for the purpose of holding the subsidizer harmless from any liability. Such cost may include a reasonable fee to cover the cost of administering the fund.

(12) *Termination Costs.* Estimates for these costs shall be determined according to a projection of costs reasonably and necessarily incurred should service to the subsidized branch be terminated. These costs shall not include any costs which the railroad would have incurred had the branch not been operated under the subsidy program. The 15 percent ceiling discussed in § 1155.5 is not applicable to these costs unless they are included in the estimated subsidy amount.

(d) *Estimated Off-Branch Costs.* A ratio of off-branch costs to revenues for the base year shall be used to derive the estimate of off-branch costs for the subsidy year. Base year off-branch costs shall be calculated using the procedure established in § 1155.7(n). If data identifying actual carloads by car type are not available, car type shall be based upon the railroad's best estimate. The resulting ratio of base year off-branch costs to revenues shall then be applied to the revenues estimated under § 1155.3(b) to develop the estimated off-branch costs for the subsidy year.

(e) *Estimated Management Fee.* The estimated management fee shall be four and one-half percent of the revenues estimated under § 1155.3(b). If the railroad and the person offering the subsidy agree to an additional fee designed as an incentive to maximize revenues, minimize expenses, promote efficient service, or otherwise achieve public interest objectives, the railroad shall be paid such fee as determined in accordance with an agreement to that effect.

(f) *Estimated Return on Value.* The railroad shall appraise the value of the property using the procedures described in § 1155.9(a). If the value is challenged, an appraisal of the property by a qualified and certified appraiser(s) shall be offered by the potential subsidizer. If the parties cannot agree on a valuation through negotiation, an average of the two appraisals shall be used as the estimated valuation. The rate of return to be applied to the value of the properties shall be determined in accordance with § 1155.9(b).

§ 1155.4 Interim payments, financial reports, and interpretations.

(a) *Interim Subsidy Payments.* The person offering a subsidy shall offer to pay, in return for the continuation of rail service, an amount computed on the basis of the interim formula described in § 1155.3. The interim payment may be adjusted, by agreement of the parties, to take into account factors, such as rate increases and changes in traffic levels, which would make the sole use of base year data an inappropriate means of estimating the payment for the subsidy year or to conform to amendments to these standards made subsequent to the original agreement. Interest shall be applied to any deferred payment, calculated at the same rate as the rate of return on value specified in § 1155.9(b), for the period of time such payment is outstanding. The amount estimated for the management fee and for the difference between the revenues attributable and the avoidable costs shall be paid to the railroad operating the branch line. The amount estimated for the return on value shall be paid directly to the trustee(s) or owner(s) of the property, unless the parties agree that such payment shall be made by the railroad in behalf of the subsidizer.

(b) *Financial Status Reports.* The railroad must establish a system for collecting costs and other required data at the branch level, and must, within thirty days after the end of each quarter of the subsidy year, file with the person offering the subsidy a "Financial Status Report" which shall include the information prescribed in the method for calculating the actual subsidy as specified in §§ 1155.6, 1155.7, and 1155.9. The format of the "Financial Status Report" is prescribed in Appendix II. Significant deviations from the original estimates must be explained. In all reports, the actual data reflecting the year to date shall show a projection to the end of the subsidy year for each item, except that off-branch costs shall be estimated during the subsidy year by applying the ratio developed in accordance with § 1155.3(d) to the revenues.

Unless the parties agree otherwise, the last Financial Status Report filed during the first ten months of the subsidy year shall be the basis for developing the estimated subsidy payment for the subsequent year's agreement. The Financial Status Reports should be considered detailed progress reports monitoring the actual costs and revenues involved for operating rail service on the branch throughout the subsidy year; the Financial Status Reports are not to be considered as "progress billings" for subsidy services performed.

(c) *Interpretations of the Standards.* Parties desiring an interpretation of the standards should file a written petition with OTA citing the section involved and setting forth their position and rationale. If the request arises from a dispute with other parties, the petitioner shall identify those parties and serve each of them with a copy of the petition. Parties desiring to file a reply must do so within 10 days of their receipt of the petition. OTA will issue an interpretation, unless it concludes that the matter raised requires amendment of the standards, in which case OTA will institute a rulemaking proceeding. The address of OTA is:

Office of Transportation Analysis, Rail Service Planning Office, Interstate Commerce Commission, Washington, D.C. 20423.

[43 FR 1692, Jan. 11, 1978. Redesignated at 47 FR 49582, Nov. 1, 1982, and amended at 48 FR 34476, July 29, 1983]

§ 1155.5 Year-end adjustment.

(a) On the basis of the railroad's year-end Final Status Report and the net impact of inflation developed in §§ 1155.7(n)(5) and 1155.8(e), the subsidy payment shall be adjusted to reconcile any differences between the subsidy payments actually made based on the estimated subsidy and the actual subsidy calculated from data reflecting the actual revenues and costs experienced in the operation of the branch during the subsidy year.

(b) Where an adjustment results in an increase in the estimated subsidy payment, the amount of such increase in excess of 15 percent of the estimated subsidy shall be treated as a carryover advoidable cost in the subsequent subsidy year. This provision shall apply unless:

(1) The railroad notifies the subsidizer in one of the Financial Status Reports issued during the first ten months of the subsidy year that the estimate will be exceeded by more than 15 percent, or

(2) The increase results from an expense approved in advance by the person offering the subsidy.

(c) Should the year-end adjustment reflect an overpayment by the person offering the subsidy, the amount of overpayment shall be reimbursed by the railroad.

[43 FR 1692, Jan. 11, 1978, as amended at 45 FR 27447, Apr. 23, 1980. Redesignated at 47 FR 49582, Nov. 1, 1982]

§ 1155.6 Revenue and income attributable to branch lines.

The revenue attributable to the rail properties is the total of the revenues assigned to the branch in accordance with this section, plus any subsidy payments that would cease upon discontinuance of service on the branch, for the subsidy year. The revenues assigned shall be derived from the following accounts:

(a) *Account 101-Freight.* The revenues assigned under this account shall be the actual revenues, including transit revenues, accruing to the railroad, derived from waybills and other source documents, for all traffic that:

(1) Originates or terminates on the branch;

(2) Originates or terminates on the branch and is handled off the branch

on the system but not on another carrier; and

(3) Originates or terminates on the branch and is handled on another carrier.

All traffic that is received or forwarded through interchange at a point on the branch, including ferry operations, shall be considered as originating or terminating on the branch. The revenues of all other bridge or overhead traffic shall be attributed to the branch on the ratio of miles moved on the branch to miles moved on the system, provided, however, that the parties may agree on a mutually acceptable usage charge for bridge traffic in lieu of the mileage apportionment.

(b) *Account 104—Switching; Account 105—Water transfers; Account 106—Demurrage; Account 110—Incidental; Account 121—Joint Facility-Credit; Account 122—Joint Facility-Debit; Account 506—Revenues from Properties Used in Other Than Carrier Operations; Account 510—Miscellaneous Rent Income; Account 519—Miscellaneous Income.* The revenues assigned under these accounts shall be the actual revenues accruing to the railroad that are directly attributable to the branch.

(c) *Conversion Chart for Revenue Accounts.*

Revenue account title	Previous account number	Present account number
Freight	101, 109	101
Switching	110.	104
Water transfers	113	105
Demurrage	137	106
Incidental	130, 132, 133, 135, 138, 139, 141, 142, 143.	110
Joint facility—credit	151	· 121
Joint facility—debit	152	122
Revenues from property used in other than carrier operations less expenses.	502, 511	506, 534
Miscellaneous rent income	510	510
Miscellaneous income	519	519

[43 FR 1692, Jan. 11, 1978; 43 FR 8530, Mar. 2, 1978. Redesignated at 47 FR 49582, Nov. 1, 1982]

§ 1155.7 Calculation of avoidable costs and management fee.

(a) This section defines:

(1) Which cost elements are eligible for inclusion in the calculation of avoidable costs;

(2) The conditions under which certain cost elements become eligible for inclusion; and

(3) The basis of apportioning those cost elements which are not assigned to the branch on an actual expense basis.

(b) The avoidable costs of providing freight service on a branch shall be the total of the just and reasonable charges assigned to the branch in accordance with this section. Those expenses apportioned under this section shall be derived from the latest Form R-1 or R-2 or R-3 of the railroad filed with the ICC prior to the conclusion of the subsidy year, and assigned to the branch according to the procedures set forth in § 1155.8 of these regulations.

(c) When the term "actual" is specified as the basis for assigning an expense, it shall mean that the only costs which can be assigned to the account are those costs which are incurred solely as a result of the continuation of rail freight service on the branch.

(d) The accounts in the following charts, which list only the "freight-only" account numbers, shall include the portion of common expenses that have been apportioned to freight service.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
(a) Maintenance of Way and Structures			
(1) Administration:			
Track			
Salaries and Wages	201	11-13-02	Actual.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Materials		21-13-02	Do.
Purchased Services		41-13-02	Do.
Other Expenses		61-13-02	Do.
Bridges and Buildings			
Salaries and Wages	201	11-13-03	Do.
Materials		21-13-03	Do.
Purchased Services		41-13-03	Do.
Other Expenses		61-13-03	Do.
Signals			
Salaries and Wages	201	11-13-04	Do.
Materials		21-13-04	Do.
Purchased Services		41-13-04	Do.
Other Expenses		61-13-04	Do.
Communications			
Salaries and Wages	201	11-13-05	Do.
Materials		21-13-05	Do.
Purchased Services		41-13-05	Do.
Other Expenses		61-13-05	Do.
Other			
Salaries and Wages	201	11-13-06	Do.
Materials		21-13-06	Do
Purchased Services		41-13-06	Do.
Other Expenses		61-13-06	Do.
(2) Repair maintenance and other:			
Roadway—Running			
Salaries and Wages	202	11-11-10	Do.
Materials		21-11-10	Do.
Repairs by Others—DR		39-11-10	Do.
Repairs for Others—CR		40-11-10	Do.
Purchased Services		41-11-10	Do.
Other Expenses		61-11-10	Do.
Roadway—Switching			
Salaries and Wages	202	11-12-10	Do.
Materials		21-12-10	Do.
Repairs by Others—DR		39-12-10	Do.
Repairs for Others—CR		40-12-10	Do.
Purchased Services		41-12-10	Do.
Other Expenses		61-12-10	Do.
Tunnels and Subways—Running			
Salaries and Wages	206	11-11-11	Do.
Materials		21-11-11	Do.
Repairs by Others—DR		39-11-11	Do.
Repairs for Others—CR		40-11-11	Do.
Purchased Services		41-11-11	Do.
Other Expenses		61-11-11	Do.
Tunnels and Subways—Switching			
Salaries and Wages	206	11-12-11	Do.
Materials		21-12-11	Do.
Repairs by Others—DR		39-12-11	Do.
Repairs for Others—CR		40-12-11	Do.
Purchased Services		41-12-11	Do.
Other Expenses		61-12-11	Do.
Bridges and Culverts—Running			
Salaries and Wages	208-210	11-11-12	Do.
Materials		21-11-12	Do.
Repairs by Others—DR		39-11-12	Do.
Repairs for Others—CR		40-11-12	Do.
Purchased Services		41-11-12	Do.
Other Expenses		61-11-12	Do.
Bridges and Culverts—Switching			
Salaries and Wages	208-210	11-12-12	Do.
Materials		21-12-12	Do.
Repairs by Others—DR		39-12-12	Do.
Repairs for Others—CR		40-12-12	Do.
Purchased Services		41-12-12	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Other Expenses		61-12-12	Do.
Ties—Running—Material	212	21-11-13	Do.
Ties—Switching—Material	212	21-12-13	Do.
Rails—Running—Material	214	21-11-14	Do.
Rails—Switching—Material	214	21-12-14	Do.
Other Track Material—Running—Material	216	21-11-15	Do.
Other Track Material—Switching—Material	216	21-12-15	Do.
Ballast—Running—Material	218	21-11-16	Do.
Ballast—Switching—Material	218	21-12-16	Do.
Track Laying and Surfacing—Running			
Salaries and Wages	220	11-11-17	Do.
Materials		21-11-17	Do.
Repairs by Others—DR		39-11-17	Do.
Repairs for Others—CR		40-11-17	Do.
Purchased Services		41-11-17	Do.
Other Expenses		61-11-17	Do.
Track Laying and Surfacing—Switching			
Salaries and Wages	220	11-12-17	Do.
Materials		21-12-17	Do.
Repairs by Others—DR		39-12-17	Do.
Repairs for Others—CR		40-12-17	Do.
Purchased Services		41-12-17	Do.
Other Expenses		61-12-17	Do.
Road Property Damaged—Running			
Salaries and Wages	202-220, and 249	11-11-48	Do.
Materials		21-11-48	Do.
Repairs by Others—DR		39-11-48	Do.
Repairs for Others—CR		40-11-48	Do.
Purchased Services		41-11-48	Do.
Other Expenses		61-11-48	Do.
Road Property Damaged—Switching			
Salaries and Wages	202-220, and 249	11-12-48	Do.
Materials		21-12-48	Do.
Repairs by Others—DR		39-12-48	Do.
Repairs for Others—CR		40-12-48	Do.
Purchased Services		41-12-48	Do.
Other Expenses		61-12-48	Do.
Road Property Damaged—Other			
Salaries and Wages	221, 227-247 253, 257 265, 269	11-13-48	Do.
Materials		21-13-48	Do.
Repairs by Others—DR		19-13-48	Do.
Repairs for Others—CR		40-13-48	Do.
Purchased Services		41-13-48	Do
Other Expenses		61-13-48	Do.
Signals and Interlockers—Running			
Salaries and Wages	249	11-11-19	Do.
Materials		21-11-19	Do.
Repairs by Others—DR		39-11-19	Do.
Repairs for Others—CR		40-11-19	Do.
Purchased Services		41-11-19	Do.
Other Expenses		61-11-19	Do.
Signals and Interlockers—Switching			
Salaries and Wages	249	11-12-19	Do.
Materials		21-12-19	Do.
Repairs by Others—DR		39-12-19	Do.
Repairs for Others—CR		40-12-19	Do.
Purchased Services		41-12-19	Do.
Other Expenses		61-12-19	Do.
Communications Systems			
Salaries and Wages	247	11-13-20	Do.
Materials		21-13-20	Do.
Repairs by Others—DR		39-13-20	Do.
Repairs for Others—CR		40-13-20	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Purchased Services		41-13-20	Do.
Other Expenses		61-13-20	Do.
Electric Power Systems			
Salaries and Wages	253, 257, and 304	11-13-21	Do.
Materials		21-13-21	Do.
Repairs by Others--DR		39-13-21	Do.
Repairs for Others—CR		40-13-21	Do.
Purchased Services		41-13-21	Do.
Other Expenses		61-13-21	Do.
Highway Grade Crossings—Running			
Salaries and Wages	273	11-11-22	Do.
Materials		21-11-22	Do.
Repairs by Others—DR		39-11-22	Do.
Repairs for Others—CR		40-11-22	Do.
Purchased Services		41-11-22	Do.
Other Expenses		61-11-22	Do.
Highway Grade Crossings—Switching			
Salaries and Wages	273	11-12-22	Do.
Materials		21-12-22	Do.
Repairs by Others—DR		39-12-22	Do.
Repairs for Other—CR		40-12-22	Do.
Purchased Services		41-12-22	Do.
Other Expenses		61-12-22	Do.
Station and Office Buildings			
Salaries and Wages	227	11-13-23	Do.
Materials		21-13-23	Do.
Repairs by Others—DR		39-13-23	Do.
Repairs for Others—CR		40-13-23	Do.
Purchased Services		41-13-23	Do.
Other Expenses		61-13-23	Do.
Station Buildings—Locomotives			
Salaries and Wages	235, 253, and 257	11-13-24	Do.
Materials		21-13-24	Do.
Repairs by Others—DR		39-13-24	Do.
Repairs for Others—CR		40-13-24	Do.
Purchased Services		41-13-24	Do.
Other Expenses		61-13-24	Do.
Shop Buildings—Freight Cars			
Salaries and Wages	235, 253, and 257	11-13-25	Do.
Materials		21-13-25	Do.
Repairs by Others—DR		39-13-25	Do.
Repairs for Others—CR		40-13-25	Do.
Purchased Services		41-13-25	Do.
Other Expenses		61-13-25	Do.
Shop Buildings--Other Equipment			
Salaries and Wages	235, 253, and 257	11-13-26	Do.
Materials		21-13-26	Do.
Repairs by Others—DR		39-13-26	Do.
Repairs for Others—CR		40-13-26	Actual.
Purchased Services		41-13-26	Do.
Other Expenses		61-13-26	Do.
Locomotive Servicing Facilities			
Salaries and Wages	231, 233	11-13-27	Do.
Materials		21-13-27	Do.
Repairs by Otherrs—DR		39-13-27	Do.
Repairs for Others—CR		40-13-27	Do.
Purchased Services		41-13-27	Do.
Other Expenses		61-13-27	Do.
Miscellaneous Buildings and Structures			
Salaries and Wages	221, 229, 239, 265, and 304	11-13-28	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Materials		21-13-28	Do.
Repairs by Others—DR		39-13-28	Do.
Repairs for Others—CR		40-13-28	Do.
Purchased Services		41-13-28	Do.
Other Expenses		61-13-28	Do.
Coal Terminals			
Salaries and Wages	243	11-13-29	Do.
Materials		21-13-29	Do.
Repairs by Others—DR		39-13-29	Do.
Repairs for Others—CR		40-13-29	Do.
Purchased Services		41-13-29	Do.
Other Expenses		61-13-29	Do.
Ore Terminals			
Salaries and Wages	243	11-13-30	Do.
Materials		21-13-30	Do.
Repairs by Others—DR		39-13-30	Do.
Repairs for Others—CR		40-13-30	Do.
Purchased Services		41-13-30	Do.
Other Expenses		61-13-30	Do.
TOFC/COFC Terminals			
Salaries and Wages	244	11-13-31	Do.
Materials		21-13-31	Do.
Repairs by Others—DR		39-13-31	Do.
Repairs for Others—CR		40-13-31	Do.
Purchased Services		41-13-31	Do.
Other Expenses		61-13-31	Do.
Other Marine Terminals			
Salaries and Wages	241	11-13-32	Do.
Materials		21-13-32	Do.
Repairs by Others—DR		39-13-32	Do.
Repairs for Others—CR		40-13-32	Do.
Purchased Services		41-13-32	Do.
Other Expenses		61-13-32	Do.
Motor Vehicle Loading and Distribution Facilities			
Salaries and Wages	227	11-13-33	Do.
Materials		21-13-33	Do.
Repairs by Others—DR		39-13-33	Do.
Repairs for Others—CR		40-13-33	Do.
Purchased Services		41-13-33	Do.
Other Expenses		61-13-33	Do.
Facilities for Other Specialized Service Operations			
Salaries and Wages	227, 237	11-13-35	Do.
Materials		21-13-35	Do.
Repairs by Others—DR		39-13-35	Do.
Repairs for Others—CR		40-13-35	Do.
Purchased Services		41-13-35	Do.
Other Expenses		61-13-35	Do.
Roadway Machines			
Salaries and Wages	269	11-13-36	Daily repair costs per GMA, fo each type of machine used on the branch line, § 1155.8(a)(1).
Materials		21-13-36	
Repairs by Others—DP		39-13-36	
Repairs for Others—CR		40-13-36	
Purchased Services		41-13-36	
Other Expenses		61-13-36	
Small Tools and Supplies			
Salaries and Wages	271	11-13-37	Assign supplies on the dai costs per GMA, for each typ of machine used on th branch; small tools assign t maintenance of way 11-11 12-10 through 17, and 4 § 1155.8(a)(2).
Materials		21-13-37	

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Repairs by Others—DR		39-13-37	
Repairs for Others—CR		40-13-37	
Purchased Services		41-13-37	
Other Expenses		61-13-37	
Snow Removal			
Salaries and Wages	272	11-13-38	Actual.
Materials		21-13-38	Do.
Repairs by Others—DR		39-13-38	Do.
Repairs for Others—CR		40-13-38	Do.
Purchased Services		41-13-38	Do.
Other Expenses		61-13-38	Do.
Fringe Benefits—Running	277, 457	12-11-00	11-11-XX, § 1155.8(a)(3)(i)
Fringe Benefits—Switching	277, 457	12-12-00	11-11-XX, § 1155.8(a)(3)(ii)
Fringe Benefits—Other	277, 457	12-13-00	11-11-XX, § 1155.8(a)(3)(iii)
Casualties and Insurance—Running			
Other Casualties	274	52-11-00	Actual.
Insurance	275	53-11-00	Do.
Casualties and Insurance—Switching			
Other Casualties	274, and 420	52-13-00	Do.
Insurance	275	53-13-00	Do.
Lease Rentals—Debit—Running	542	31-11-00	Do.
Lease Rentals—Debit—Switching	542	31-12-00	Do.
Lease Rentals—Debit—Other	542	31-13-00	Do.
Lease Rentals—Credit—Running	509	32-11-00	Do.
Lease Rentals—Credit—Switching	509	32-12-00	Do.
Lease Rentals—Credit—Other	509	32-13-00	Do.
Joint Facility Rents—Debit—Running	541	33-11-00	Do.
Joint Facility Rents—Debit—Switching	541	33-12-00	Do.
Joint Facility—Debit—Other	541	33-13-00	Do.
Joint Facility Rent—Credit—Running	508	34-11-00	Do.
Joint Facility Rent—Credit—Switching	508	34-12-00	Do.
Joint Facility Rent—Credit—Other	508	34-13-00	Do.
Other Rents—Debit—Running	543	35-11-00	Do.
Other Rents—Debit—Switching	543	35-12-00	Do.
Other Rents—Debit—Other	543	35-13-00	Do.
Other Rents—Credit—Running	510	36-11-00	Do.
Other Rents—Credit—Switching	510	36-12-00	Do.
Other Rents—Credit—Other	510	36-13-00	Do.
Depreciation—Running	266	62-11-00	Do.
Depreciation—Switching	266	62-12-00	Do.
Depreciation—Other	266, 306	62-13-00	Do.
Joint Facility—Debit—Running	278	37-11-00	Do.
Joint Facility—Debit—Switching	278	37-12-00	Do.
Joint Facility—Debit—Other	278	37-13-00	Do.
Joint Facility—Credit—Running	279	38-11-00	Do.
Joint Facility—Credit—Switching	279	38-12-00	Do.
Joint Facility—Credit—Other	279	38-13-00	Do.
Dismantling Retired Road Property—Running			
Salaries and Wages	270	11-11-39	Do.
Materials		21-11-39	Do.
Purchased Services		41-11-39	Do.
Other Expenses		61-11-39	Do.
Dismantling Retired Road Property—Switching			
Salaries and Wages	270	11-12-39	Do.
Materials		21-12-39	Do.
Purchased Services		41-12-39	Do.
Other Expenses		61-12-39	Do.
Dismantling Retired Road Property—Other			
Salaries and Wages	270	11-13-39	Do.
Materials		21-13-39	Do.
Purchased Services		41-13-39	Do.
Other Expenses		61-13-39	Do.
Other—Running			
Salaries and Wages	281-282, 274	11-11-99	Do.
Materials		21-11-99	Do.
Purchased Services		41-11-99	Do.
Other Expenses		61-11-99	Do.

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Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Other—Switching			
Salaries and Wages	281-282, 274	11-12-99	Do.
Materials		21-12-99	Do.
Purchased Services		41-12-99	Do.
Other Expenses		61-12-99	Do.
Other—Other			
Salaries and Wages	281-282	11-13-99	Do.
Materials		21-13-99	Do.
Purchased Services		41-13-99	Do.
Other Expenses		61-13-99	Do.
(b) Maintenance of Equipment			
(1) Locomotives:			
Administration			
Salaries and Wages	301	11-21-01	Do.
Materials		21-21-01	Do.
Purchased Services		41-21-01	Do.
Other Expenses		61-21-01	Do.
Repairs and Maintenance			
Salaries and Wages	311	11-21-41	Road diesel and Road Electric locomotive gross ton miles. Yard Diesel and Yard Electric locomotive unit hours, § 1155.8(b)(1).
Materials		21-21-41	
Repairs by Others—DR		39-21-41	
Repairs for Others—CR		40-21-41	
Purchased Services		41-21-41	
Other Expenses		61-21-41	
Machinery Repair			
Salaries and Wages	302	11-21-40	Actual.
Materials		21-21-40	Do.
Repairs by Others—DR		39-21-40	Do.
Repairs for Others—CR		40-21-40	Do.
Purchased Services		41-21-40	Do.
Other Expenses		61-21-40	Do.
Equipment Damaged			
Salaries and Wages	311	11-21-48	Do.
Materials		21-21-48	Do.
Repairs by Others—DR		39-21-48	Do.
Repairs for Others—CR		40-21-48	Do.
Purchased Services		41-21-48	Do.
Other Expenses		61-21-48	Do.
Fringe Benefits	335,457	12-21-00	11-21-xx, § 1155.8(b)(3)(i).
Other Casualties and Insurance			
Other Casualties	332	52-21-00	Actual.
Insurance	333	53-21-00	Do.
Lease Rentals—Debit	537	31-21-00	Do.
Lease Rentals—Credit	504	32-21-00	Do.
Joint Facility Rent—Debit	541	33-21-00	Do.
Joint Facility Rent—Credit	508	34-21-00	Do.
Other Rents—Debit	537	35-21-00	Do.
Other Rents—Credit	504	36-21-00	Do.
Joint Facility—Debit	336	37-21-00	Do.
Joint Facility—Credit	337	38-21-00	Do.
Depreciation	331, 305	62-21-00	All locomotives, locomotive uni hours, § 1155.8(b)(2).
Dismantling Retired Property			
Salaries and Wages	306, 329	11-21-39	Actual.
Materials		21-21-39	Do.
Purchased Services		41-21-39	Do.
Other Expenses		61-21-39	Do.
Other			
Salaries and Wages	339, 332	11-21-99	Do.
Materials	339	21-21-99	Do.
Purchased Services	339	41-21-99	Do.
Other Expenses	339, 332	61-21-99	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
(2) Freight Cars:			
Administration			
Salaries and Wages	301	11-22-01	Do.
Materials		21-22-01	Do.
Purchased Services		41-22-01	Do.
Other Expenses		61-22-01	Do.
Machinery Repair			
Salaries and Wages	302	11-22-40	Do.
Materials		21-22-40	Do.
Repairs by Others—DR		39-22-40	Do.
Repairs for Others—CR		40-22-40	Do.
Purchased Services		41-22-40	Do.
Other Expenses		61-22-40	Do.
Equipment Damage			
Salaries and Wages	314	11-22-48	Do.
Materials		21-22-48	Do.
Repairs by Others—DR		39-22-48	Do.
Repairs for Others—CR		40-22-48	Do.
Purchased Services		41-22-48	Do.
Other Expenses		61-22-48	Do.
Fringe Benefits	335, 457	12-22-00	11-22-XX, § 1155.8(b)(3)(iii).
Other Casualties and Insurance			
Other Casualties	332	52-22-00	Actual.
Insurance	333	53-22-00	Do.
Joint Facility Rent—DR	541	33-22-00	Do.
Joint Facility Rent—CR	508	34-22-00	Do.
Joint Facility—DR	336	37-22-00	Do.
Joint Facility—CR	337	38-22-00	Do.
Dismantling Retired Property			
Salaries and Wages	306, 329	11-22-39	Do.
Materials		21-22-39	Do.
Purchased Services		41-22-39	Do.
Other Expenses		61-22-39	Do.
Other			
Salaries and Wages	330, 339, and 332	11-22-99	Do.
Materials		21-22-99	Do.
Purchased Services		41-22-99	Do.
Other Expenses		61-22-99	Do.
Freight Car Costs Per Day and Per Mile			
Repair and Maintenance			
Salaries and Wages	314	11-22-42	These accounts are used to develop the cost per car day and per car mile for each type of car. § 1155.7(g).
Materials		21-22-42	
Repairs by Others—DR		39-22-42	
Repairs for Others—CR		40-22-42	
Purchased Services		41-22-42	
Other Expenses		61-22-42	
Lease Rentals—DR	536	31-22-00	
Lease Rentals—CR	503	32-22-00	
Depreciation	331, 305	62-22-00	
Other Rents—DR	536	35-22-00	
Other Rents—CR	503	36-22-00	
(3) Other Equipment:			
Administration			
Salaries and Wages	301	11-23-01	Actual.
Materials		21-23-01	Do.
Purchased Services		41-23-01	Do.
Other Expenses		61-23-01	Do.
Repair and Maintenance			
Trucks, Trailers and Containers—Revenue Service			
Salaries and Wages	318	11-23-43	Do.
Materials		21-23-43	Do.
Repairs by Others—DR		39-23-43	Do.

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Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Repairs for Others—CR		40-23-43	Do.
Purchased Services		41-23-43	Do.
Other Expenses		61-23-43	Do.
Floating Equipment—Revenue Service			
Salaries and Wages	323	11-23-44	Do.
Materials		21-23-44	Do.
Repairs by Others—DR		39-23-44	Do.
Repairs for Others—CR		40-23-44	Do.
Purchased Services		41-23-44	Do.
Other Expenses		61-23-44	Do.
Computer and Data Processing			
Salaries and Wages	(1)	11-23-46	Do.
Materials		21-23-46	Do.
Repairs by Others—DR		39-23-46	Do.
Repairs for Others—CR		40-23-46	Do.
Purchased Services		41-23-46	Do.
Other Expenses		61-23-46	Do.
Machinery			
Salaries and Wages	302	11-23-40	Do.
Materials		21-23-40	Do.
Repairs by Others—DR		39-23-40	Do.
Repairs for Others—CR		40-23-40	Do.
Purchased Services		41-23-40	Do.
Other Expenses		61-23-40	Do.
Work and Other Nonrevenue Equipment			
Salaries and Wages	326,328	11-23-47	Do.
Materials		21-23-47	Do.
Repairs by Others—DR		39-23-47	Do.
Repairs for Others—CR		40-23-47	Do.
Purchased Services		41-23-47	Do.
Other Expenses		61-23-47	Do.
Equipment Damaged			
Salaries and Wages	318, 323, 326, and 328	11-23-48	Do.
Materials		21-23-48	Do.
Repairs by Others—DR		39-23-48	Do.
Repairs for Others—CR		40-23-48	Do.
Purchased Services		41-23-48	Do.
Other Expenses		61-23-48	Do.
Fringe Benefits	335, 457	12-23-00	11-23-XX, § 1155.8(b)(3)(ii).
Other Casualties and Insurance			
Other Casualties	332	52-23-00	Do.
Insurance	333	53-23-00	Actual.
Lease Rentals—DR	539, 540	31-23-00	Do.
Lease Rentals—CR	506, 507	32-23-00	Do.
Joint Facility Rent—DR	541	33-23-00	Do.
Joint Facility Rent—CR	508	34-23-00	Do.
Other Rents—DR	539, 540	35-23-00	Do.
Other Rents—CR	506, 507	36-23-00	Do.
Depreciation	331, 305	62-23-00	Do.
Joint Facility—DR	336	37-23-00	Do.
Joint Facility—CR	337	38-23-00	Do.
Dismantling Retired Property			
Salaries and Wages	306, 329	11-23-39	Do.
Materials		21-23-39	Do.
Purchased Services		41-23-39	Do.
Other Expenses		61-23-39	Do.
Other			
Salaries and Wages	339, 332	11-23-99	Do.
Materials	339	21-23-99	Do.
Purchased Services	339	41-23-99	Do.
Other Expenses	339, 332	61-23-99	Do.
(c) Transportation			
(1) Train Operations:			
Administration			
Salaries and Wages	371	11-31-01	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Materials		21-31-01	Do.
Purchased Services		41-31-01	Do.
Other Expenses		61-31-01	Do.
Engine Crews			
Salaries and Wages	392	11-31-56	Do.
Materials	402	21-31-56	Train Hours, § 1155.8(c)(1)(i).
Purchased Services	402	41-31-56	Actual.
Other Expenses	402	61-31-56	Do.
Train Crews			
Salaries and Wages	401	11-31-57	Do.
Materials	402	21-31-57	Trains Hours, § 1155.8(c)(1)(i).
Purchased Services	402	41-31-57	Actual.
Other Expenses	402	61-37-57	Do.
Dispatching Trains			
Salaries and Wages	372	11-31-58	Do.
Materials		21-31-58	Do.
Purchased Services		41-31-58	Do.
Other Expenses		61-31-58	Do.
Operating Signals and Interlockers			
Salaries and Wages	404	11-31-59	Do.
Materials		21-31-59	Do.
Purchased Services		41-31-59	Do.
Other Expenses		61-31-59	Do.
Operating Drawbridges			
Salaries and Wages	406	11-31-60	Do.
Materials		21-31-60	Do.
Purchased Services		41-31-60	Do.
Other Expenses		61-31-60	Do.
Highway Crossing Protection			
Salaries and Wages	405	11-31-61	Do.
Materials		21-31-61	Do.
Purchased Services		41-31-61	Do.
Other Expenses		61-31-61	Do.
Train and Inspection and Lubrication			
Salaries and Wages	314,402, and 311	11-31-62	Train Hours, § 1155.8(c)(1)(i).
Materials		21-31-62	Train Hours, § 1155.8(c)(1)(i).
Purchased Services		41-31-62	Actual.
Other Expenses		61-31-62	Do.
Locomotive Fuel			
Salaries and Wages	394	11-31-67	Diesel locomotive unit hours, § 1155.8(c)(1)(ii).
Materials		21-31-67	
Purchased Services		41-31-67	
Other Expenses		61-31-67	
Electric Power Purchased or Produced for Motive Power			
Salaries and Wages	395, 445	11-31-68	Electric Locomotive unit hours, § 1155.8(c)(1)(iii).
Materials	395, 445	21-31-68	
Purchased Services	395, 396, 445	41-31-68	
Other Expenses	395, 445	61-31-68	
Servicing Locomotives			
Salaries and Wages	400	11-31-69	Locomotive unit miles, § 1155.8(c)(1)(iv).
Materials		21-31-69	
Purchased Services		41-31-69	
Other Expenses		61-31-69	
Freight Lost or Damaged—Solely Related			
	418, 419	51-31-00	Actual.
Clearing Wrecks			
Salaries and Wages	415	11-31-63	Do.
Materials		21-31-63	Do.
Purchased Services		41-31-63	Do.
Other Expenses		61-31-63	Do.

Operating expense group and account	Previous account number	Present account Number	Basis of assignment to on-branch costs
Fringe Benefits	409, 457	12-31-00	11-31-XX, § 1155.8(c)(4)(i).
Other Casualties and Insurance			
Other Casualties	416, 417, 420	52-31-00	Actual.
Insurance	414	53-31-00	Do.
Joint Facility—DR	412	37-31-00	Do.
Joint Facility—CR	413	38-31-00	Do.
Other			
Salaries and Wages	402, 411, and 420	11-31-99	Do.
Materials		21-31-99	Do.
Purchased Services		41-31-99	Do.
Other Expenses		61-31-99	Do.
(2) Yard Operations:			
Administration			
Salaries and Wages	371	11-32-01	Do.
Materials		21-32-01	Do.
Purchased Services		41-32-01	Do.
Other Expenses		61-32-01	Do.
Switch Crews			
Salaries and Wages	378, 380	11-32-64	Do.
Materials	389	21-32-64	Locomotive unit hours, § 1155.8(c)(2)(i).
Purchased Services	389	41-32-64	Actual.
Other Expenses	389	61-32-64	Do.
Controlling Operations			
Salaries and Wages	377	11-32-65	Do.
Materials	389	21-32-65	Do.
Purchased Services	389	41-32-65	Do.
Other Expenses	389	61-32-65	Do.
Yard and Terminal Clerical			
Salaries and Wages	377	11-32-66	Do.
Materials	389	21-32-66	Do.
Purchased Services	389	41-32-66	Do.
Other Expenses	389	61-32-66	Do.
Operating Switches, Signals, Retarders and Humps			
Salaries and Wages	379	11-32-59	Do.
Materials	389	21-32-59	Do.
Purchased Services	389	41-32-59	Do.
Other Expenses	389	61-32-59	Do.
Locomotive Fuel			
Salaries and Wages	382	11-32-67	Diesel locomotive unit hours, § 1155.8(c)(2)(ii).
Materials		21-32-67	
Purchased Services		41-32-67	
Other Expenses		61-32-67	
Electric Power Purchased or Produced for Motive Power			
Salaries and Wages	383, 445	11-32-68	Electric locomotive unit hours, § 1155.8(c)(2)(iii).
Materials	383, 445	21-32-68	
Purchased Services	383, 384, 445	41-32-68	
Other Expenses	383, 445	61-32-68	
Servicing Locomotives			
Salaries and Wages	388	11-32-69	Locomotive unit hours, § 1155.8(c)(2)(i).
Materials		21-32-69	
Purchased Services		41-32-69	
Other Expenses		61-32-69	
Freight Lost or Damaged—Solely Related	418, 419	51-32-00	Actual.
Clearing Wrecks			
Salaries and Wages	415	11-32-63	Actual.
Materials		21-32-63	Do.
Purchased Services		41-32-63	Do.
Other Expenses		61-32-63	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Fringe Benefits	409, 457	12-32-00	11-32-XX, § 1155.8(c)(4)(ii).
Other Casualties and Insurance			
Other Casualties	416, 420	52-32-00	Actual.
Insurance	414	53-32-00	Do.
Joint Facility—DR	390, 412	37-32-00	Do.
Joint Facility—CR	391, 413	38-32-00	Do.
Other			
Salaries and Wages	411, 420	11-32-99	Do.
Materials		21-32-99	Do.
Purchased Services		41-32-99	Do.
Other Expenses		61-32-99	Do.
(3) Train and Yard Operations Common:			
Cleaning Car Interiors			
Salaries and Wages	402	11-33-70	Do.
Materials		21-33-70	Do.
Purchased Services		41-33-70	Do.
Adjusting and Transferring Loads			
Salaries and Wages	373, 402	11-33-71	Do.
Materials	376, 402	21-33-71	Do.
Purchased Services	376, 402	41-33-71	Do.
Carloading Devices and Grain Doors			
Salaries and Wages	402	11-33-72	Do.
Materials		21-33-72	Do.
Purchased Services		41-33-72	Do.
Freight Lost or Damaged—All Other	418, 419	51-33-00	Do.
Fringe Benefits	409	12-33-00	11-33-XX, § 1155.8(c)(4)(iii).
(4) Specialized Service Operations:			
Administration			
Salaries and Wages	371, 408, 443	21-34-01	Do.
Materials		21-34-01	Do.
Purchased Services		41-34-01	Do.
Other Expenses		61-34-01	Do.
Pick-up and Delivery, Marine Line Haul, and Rail Substitute Service			
Salaries and Wages	408, 421, 422	11-34-73	Do.
Materials		21-34-73	Do.
Purchased Services		41-34-73	Do.
Other Expenses		61-34-73	Do.
Loading and Unloading and Local Marine			
Salaries and Wages	375, 408, 421 422 and 443	11-34-74	Do.
Materials		21-34-74	Do.
Purchased Services		41-34-74	Do.
Other Expenses		61-34-74	Do.
Protective Services			
Salaries and Wages	402, 421, 422 and 443	11-34-75	Do.
Materials		21-34-75	Do.
Purchased Services		41-34-75	Do.
Other Expenses		61-34-75	Do.
Freight Lost or Damaged—Solely Related			
Fringe Benefits	409, 457, and 449	12-34-00	11-34-XX, § 1155.8(c)(4)(iv).
Casualties and Insurance			
Other Casualties	416, 420	52-34-00	Actual.
Insurance	414	53-34-00	Do.
Joint Facility—DR	412, 447	37-34-00	Do.
Joint Facility—CR	413, 448	38-34-00	Do.
Other			
Salaries and Wages	411, 442, 446, and 420	11-34-99	Do.
Materials		21-34-99	Do.
Purchased Services		41-34-99	Do.
Other Expenses		61-34-99	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
(5) Administrative Support Operations:			
Administration			
Salaries and Wages	371	11-35-01	Do.
Materials		21-35-01	Do.
Purchased Services		41-35-01	Do.
Other Expenses		61-35-01	Do.
Employees Performing Clerical and Accounting Functions			
Salaries and Wages	373	11-35-76	Do.
Materials	376	21-35-76	Do.
Purchased Services	376	41-35-76	Do.
Other Expenses	376	61-35-76	Do.
Communication Systems Operation			
Salaries and Wages	373, 407	11-35-77	Do.
Materials	376, 407	21-35-77	Do.
Purchased Services	376, 407	41-35-77	Do.
Other Expenses	376, 407	61-35-77	Do.
Loss and Damage Claims Processing			
Salaries and Wages	418, 419	11-35-78	Number of Claims, § 1155.8(c)(3)(i).
Materials		21-35-78	
Purchased Services		41-35-78	
Other Expenses		61-35-78	
Fringe Benefits	409, 457	12-35-00	11-35-XX, § 1155.8(c)(4)(v).
Joint Facility—DR	412, 447	37-35-00	Actual.
Joint Facility—CR	413, 448	38-35-00	Do.
Casualties and Insurance			
Other Casualties	416, 420	52-35-00	Do.
Insurance	414	53-35-00	Do.
Other			
Salaries and Wages	411, 420	11-35-99	Do.
Materials	411	21-35-99	Do.
Purchased Services	411	41-35-99	Do.
Other Expenses	411, 420	61-35-99	Do.
(d) General Administrative			
Officers—General Administration			
Salaries and Wages	351, 451	11-61-01	Do.
Materials		21-61-01	Do.
Purchased Services		41-61-01	Do.
Other Expenses		61-61-01	Do.
Accounting, Auditing and Finance			
Salaries and Wages	452	11-61-86	Do.
Materials		21-61-86	Do.
Purchased Services		41-61-86	Do.
Other Expenses		61-61-86	Do.
Management Services and Data Processing			
Salaries and Wages	452	11-61-87	Do.
Materials		21-61-87	Do.
Purchased Services		41-61-87	Do.
Other Expenses		61-61-87	Do.
Marketing			
Salaries and Wages	352	11-61-88	Do.
Materials		21-61-88	Do.
Purchased Services		41-61-88	Do.
Other Expenses		61-61-88	Do.
Sales			
Salaries and Wages	352	11-61-89	Do.
Materials		21-61-89	Do.
Purchased Services		41-61-89	Do.
Other Expenses		61-61-89	Do.
Industrial Development			
Salaries and Wages	356, 452, and 451	11-61-90	Do.
Materials		21-61-90	Do.
Purchased Services		41-61-90	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Other Expenses		61-61-90	Do.
Personnel and Labor Relations			
Salaries and Wages	452 and 451	11-61-91	Do.
Materials		21-61-91	Do.
Purchased Services		41-51-91	Do.
Other Expenses		61-61-92	Do.
Legal and Secretarial			
Salaries and Wages	452, 454, 274, 332, and 420	11-61-92	Do.
Materials		21-61-92	Do.
Purchased Services		41-61-92	Do.
Other Expenses		61-61-92	Do.
Public Relations and Advertising			
Salaries and Wages	353, 354	11-61-93	Do.
Materials		21-61-93	Do.
Purchased Services		41-61-93	Do.
Other Expenses		61-61-93	Do.
Research and Development			
Salaries and Wages	([1])	11-61-94	Do.
Materials		21-61-94	Do.
Purchased Services		41-61-94	Do.
Other Expenses		61-61-94	Do.
Fringe Benefits	359,456, 457	12-61-00	11-61-XX., § 1155.8(d)(1).
Casualties and Insurance			
Other Casualties	([2])	52-61-00	Actual.
Insurance	357, 455	53-61-00	Do.
Writedown of Uncollectible Accounts	706, 707	63-61-00	Do.
Other Taxes Except on Corporate Income or Payroll	532	65-61-00	Do.
Joint Facility—DR	461	37-61-00	Do.
Joint Facility—CR	462	38-61-00	Do.
Other			
Salaries and Wages	355, 360, 460, 351, 451, 452, and 453	11-61-99	Do.
Materials		21-61-99	Do.
Purchased Services		41-61-99	Do.
Other Expenses		61-61-99	Do.

[1] Various accounts.

[2] None.

(e) *Deadheading, Taxi, and Hotel Costs.* The costs assigned under this subsection shall be the actual costs incurred as a result of providing service to the branch line for deadheading, taxi, and hotel costs. The amounts included under this subsection shall not be included under other subsections of these regulations.

(f) *Overhead Movement Costs.* The costs assigned under this subsection shall be the actual costs incurred in moving overhead in order to provide service to the branch. The amounts shown under this subsection shall not be included under other subsections of these regulations.

(g) *Freight Car Costs.* For Class I railroads, the on-branch costs for time-mileage freight cars shall be calculated on the basis of the railroad's average costs per day and per mile. The costs per day and per mile shall be calculated separately for each type of car specified in Ex Parte 334 (Car Service Compensation—Basic Per Diem Charges—Formula Revision In Accordance with the Railroad Revitalization and Regulatory Reform Act of 1976). These costs shall include: *Account 11-22-42—Salaries and wages—freight cars—repairs and maintenance; Account 21-22-42—Materials—freight cars—repairs and maintenance; Account 39-22-42—Repairs billed by others (Debit)—freight cars—repairs and maintenance; Account 40-22-42—Repairs billed to others (Credit)—freight cars—repairs and maintenance;*

Account 41-22-42—Other purchased services—freight cars—repairs and maintenance; Account 61-22-42—Other expenses—freight cars—repairs and maintenance; Account 31-22-00—Lease rentals (Debit) freight cars; Account 32-22-00—Lease Rentals (Credit)—freight cars; Account 35-22-00—Other rents (Debit)—freight cars; Account 36-22-00—Other rents (Credit—freight cars; and Account 62-22-00—Depreciation—freight cars; and the return on investment in freight cars. The system total of the repair and maintenance accounts, all accounts designated XX-XX-42, and depreciation shall be divided into time related costs and mileage related costs on the basis of the present Rail Form A apportionment factors (i.e., 50 percent time and 50 percent mileage for repairs, and 60 percent time and 40 percent mileage for depreciation). Return on investment shall be treated as a 100 percent time-related cost. The system total receipts and payments for the hire of time mileage cars and the basic data used in the development of the car-day and car-mile factors shall be taken from the railroad's latest Form R-1 and company records. The specific steps to complete the calculations are as follows:

(1) The total system car days by car type shall be calculated by averaging the railroad's freight car ownership at the beginning and ending of the year (R-1, schedule 710, columns (b) and (k)), multiplying the average by the standard active number of car days (346) as developed in ICC Docket Number 31358; subtracting car days on foreign lines (source: Company records) and adding the foreign car days on home line (source: Company records). This procedure shall be completed for each car type specified in Ex Parte 334.

(2) The total railroad car miles shall be calculated by adding the loaded car miles for railroad owned and leased cars (Form OSA, column (d), items 5-010 through 5-027), to the empty car miles for railroad owned and leased cars (Form OSA, column (d), items 5-110 through 5-127). The total car miles, loaded and empty shall be calculated for each car type specified in Ex Parte 334.

(3) The cost per car-day shall be calculated for each type of time-mileage car by adding 50 percent of the total freight car repair costs for each car type (R-1, schedule 415, column (b)); 60 percent of the depreciation costs for each car type (R-1, schedule 415, column (c)); 100 percent of return on investment, which is calculated by obtaining the net depreciated investment for each car type and multiplying it by the cost of capital ratio developed for use in Form 2 of the unrevised Rail Form A of the railroad; the time portion of the railroad's payments for hire of time-mileage freight cars (R-1, schedule 366, columns (h) and (i)); subtracting the time portion of the railroad's receipts for hire of time-mileage freight cars (R-1, schedule 366, columns (d) and (e)); and dividing the result by the total car days for each car type developed in paragraph (1).

(4) The cost per mile shall be calculated for each type of time-mileage car by adding 50 percent of the total freight train car repair cost for each car type (R-1, schedule 415, column (b)); 40 percent of the total depreciation costs for each car type (R-1, schedule 415, column (c)); the mileage portion of the railroad's payments for the hire of time-mileage freight cars (R-1, schedule 366, column (g)); subtracting the mileage portion of the railroad's receipts for hire of time-mileage of freight cars (R-1, schedule 366, column (c)); and dividing the result by the total car miles for each car type developed in paragraph (2).

(5) The costs per car-day and per car-mile developed in paragraphs (3) and (4) of this section shall be applied to the total car-days and total car miles for each car type accumulated on the branch for all traffic originated and/or terminated on the branch and all bridge traffic handled by the branch during the subsidy period which are attributed to time-mileage freight-train cars. The car-day and car-mile factors shall be furnished by the railroads.

(6) The on-branch costs for freight cars rented on a straight mileage basis shall be the railroad's total payments for mileage cars (R-1, schedule 366, column (f)), for each car type; divided

by the total miles on which the charges were based.

(7) For Class II railroads, the on-branch costs for time-mileage and straight mileage freight cars shall be calculated in the same manner prescribed for Class I railroads, using the latest data available.

(h) *Revenue taxes.* The amount of revenue taxes shall be computed based on the amounts directly paid in those States that subject the railroad to a revenue tax.

(i) *Property taxes.* (1) The amount of property taxes shall be the amount levied against the property on the branch, in those States where a true ad valorem tax is levied, based on the value of certain kinds of railroad property, such as track, land, buildings, and other facilities.

(2) In States where property taxes are assessed on the basis of a formula of a statewide valuation of property and the branch or branches are included in the valuation of the railroad operating the service, the tax on each branch shall be based on the distribution of the assessment by the State to that branch and the application of the appropriate tax rate or rates.

(3) In States where the real property taxes are assessed and levied against the owner of the property but the rolling stock is assessed to the railroad operating the service on the basis of a formula of a statewide valuation of property, the tax on rolling stock attributable to each branch shall be determined as follows:

(i) Find the percent which the cost of equipment as used in the formula is to the total of all property cost as used in the formula,

(ii) Apply that percentage to the total State assessment to determine the portion of the assessment attributable to rolling stock;

(iii) Allocate the rolling stock assessment thus determined to each branch on the basis of car and locomotive unit miles on the branch to total car and locomotive unit miles in the State;

(iv) Apply appropriate tax rate or rates to the allocated assessment thus determined.

(j) *Administrative Fee.* A carrier shall be entitled to receive an administrative fee only if the carrier is not entitled to include General Administrative Expenses, § 1155.7(d), as an avoidable cost. The administrative fee shall be calculated as one percent of the total revenues attributed to the branch under § 1155.6 and shall be allowed as an avoidable cost to the railroad to cover all costs of administering the subsidy program.

(k) *Deferred Subsidy Payment.* If the subsidy estimate or adjustment is paid in deferred payments, the railroad shall be compensated for the use of its working capital by applying the interest rate established in § 1155.9(b) to the deferred payment for the period of time such payment is outstanding.

(l) *Casualty Reserve Account.* The costs assigned under this account shall be any payment mutually agreed to by the person offering the subsidy and the railroad for the purpose of holding the subsidizer harmless from any liability under those accounts that are used to record any costs incurred by the railroad as a result of personal injury or property damage.

(m) *Termination Costs.* The costs assigned under this subsection shall be the actual costs reasonably and necessarily incurred as a result of terminating service to the subsidized branch. These costs shall not include any costs which the railroad would have incurred had the branch not been operated under the subsidy program. The 15 percent ceiling contained in § 1155.5 is not applicable to those costs unless such costs were included in the estimated subsidy payment.

(n) *Off-Branch Costs.* Until the ICC revises the Rail Form A cost procedure to facilitate the incorporation of the new USOA as well as review and if necessary change the theories contained within the present formula the procedure for determining the off-branch costs will use the existing Rail Form A formula applied to the latest Annual Report, Form R-1, that has been filed by the railroad using the prior unrevised accounting system. The development of the off-branch costs shall be as follows:

(1) Terminal costs, line-haul car costs, and interchange costs shall be considered as the off-branch avoidable costs of providing service over the remainder of the railroad's system.

These costs shall be computed by applying variable unit costs to the service units attributed to the branch traffic during the subsidy period.

(2) The following through-train, single-line, variable unit costs shall be developed by a Class I railroad by applying Rail Form A to data contained in its latest Form R-1 filed with the Commission:

(i) Normal Rail Form A carload terminal cost per carload by car type.

(ii) Modified Rail Form A carload terminal cost per carload by car type (i.e., (*a*) substitute an intertrain switching cost separated between mileage and other than mileage cars, in place of a roadtrain to industry switching cost; (*b*) substitute modified car ownership costs per car-day for two days developed in accordance with § 1155.7(g), above, for the standard Rail Form A car ownership cost).

(iii) Rail Form A per hundredweight terminal cost.

(iv) Rail Form A cost per car-mile by car type.

(v) Rail Form A cost per ton-mile.

(vi) Rail Form A cost per car interchanged, separated between mileage and other than mileage cars.

These costs shall be applied by Class I railroads in accordance with the procedure set forth below in § 1155.7(n)(3).

(3) Calculations by car type: (i) The sum of all terminal costs incurred off the branch line shall be calculated by multiplying the modified terminal cost per carload by car type, paragraph (n)(2)(ii) above, by the total number of carloads originated or terminated on the branch line during the subsidy year. To this amount add the normal terminal cost per carload by car type, paragraph (n)(2)(i) above, times the number of carloads which originated or terminated on the branch that are local to the railroad serving the branch.

(ii) The sum of the hundredweight terminal costs incurred off the branch line shall be calculated by multiplying the hundredweight of freight originated or terminated on the branch that are local to the railroad serving the branch.

(iii) The sum of the line-haul car-mile costs incurred off the branch line shall be calculated by multiplying the car-mile cost by car type, paragraph (n)(2)(iv) above, by the loaded car-miles generated off the branch line by cars originated or terminated on the branch during the subsidy year. Where overhead movements to and from the branch have been included in the on-branch cost calculation under other sections of § 1155.7, the related loaded car-miles shall be excluded from this calculation.

(iv) The sum of the line-haul ton-mile costs shall be determined by multiplying the ton-mile cost, paragraph (n)(2)(v) above, by the total ton-miles of revenue freight incurred by the railroad on its lines, other than the branch lines, for revenue freight originated or terminated on the branch during the subsidy year.

(v) The interchange cost shall be calculated by multiplying the cost per car interchanged, paragraph (n)(2)(vi) above, by the number of carloads of traffic interchanged at a point off the branch line and originated or terminated on the branch.

(4) Class II and Class III line-haul railroads shall calculate off-branch costs as follows (based on: The carrier's latest Form R-2 or R-3 filed with the ICC; the ICC's latest *Rail Carload Cost Scales;* and the carrier's own records):

(i) A carrier that has only freight operations shall calculate the estimated system variable expenses by multiplying the total operating expenses by .78, the three-year composite variability ratio for all Class I railroads. If a carrier has passenger and freight service, the freight portion of the total estimated system variable expenses shall be calculated by multiplying the total estimated system variable expenses, calculated as above, by the ratio of freight related operating expenses to total railway operating expenses [freight related operating expenses divided by total railway operating expenses].

(ii) The total number of revenue carload terminal handlings shall be determined from company records [originating and terminating (local) revenue carloads multiplied by 2, plus originating or terminating and interchange (interline) revenue carloads].

(iii) The total number of revenue carload interchange handlings shall be determined from company records [bridge (interchange to interchange) revenue carloads multiplied by 2, plus revenue carloads that are originated or terminated and interchanged (interline)].

(iv) The average load per car shall be determined from company records [ton-miles-revenue freight, divided by loaded freight car-miles].

(v) The ratios employed to separate the estimated system variable expenses between interchange, terminal and line-haul operations are calculated as follows:

(A) Theoretical interchange expenses are calculated by multiplying the number of revenue carload interchange handlings, paragraph (n)(4)(iii) of this section, by the interchange variable cost per carload for other than box, unequipped, refrigerator, tank and TOFC cars (ICC *Rail Carload Cost Scales,* Table 12, Line 6 or 14, appropriate region, multiplied by 100).

(B) Theoretical terminal carload expenses are calculated by multiplying the number of revenue carload terminal handlings, paragraph (n)(4)(ii) of this section, by the average train variable terminal cost per carload for box-general service, equipped (one half of the terminal cost per carload ICC *Rail Carload Scales,* Table 3, appropriate region, line 2, col. (6)).

(C) Theoretical terminal lading expenses are calculated by multiplying the total terminal tons [terminal carload handlings, paragraph (n)(4)(ii) of this section, multiplied by average load per car, paragraph (n)(4)(iv) of this section] by the average train variable terminal cost per ton for box-general service, equipped [one half of the terminal cwt. cost, ICC *Rail Carload Cost Scales,* Table 3, appropriate region, line 2 col. (7), multiplied by 20].

(D) Theoretical line-haul car expenses are calculated by multiplying the carrier's loaded car-miles by the average train variable cost per car-mile excluding interchange, for box-general service, equipped [ICC *Rail Carload Cost Scales,* Table 3, appropriate region, Line 2, col. (4) minus Appendix B, appropriate region, Line 2, col. (4)].

(E) Theoretical line-haul lading expenses are calculated by multiplying the carrier's total ton-miles of revenue freight by the average train variable ton-mile cost for a box-general service, equipped [wt-mile cost ICC *Rail Carload Cost Scales,* Table 3, appropriate region, Line 2, col. (5), multiplied by 20].

(F) Theoretical station clerical expenses are calculated by multiplying total revenue carload terminal handlings, paragraph (n)(4)(ii) of this section, by the variable station clerical cost per carload [one half of the station clerical cost per carload, ICC *Rail Carload Cost Scales,* Table 18, appropriate region, Line (2) multiplied by 100].

(G) Total theoretical system variable expenses are calculated by adding paragraph (n)(4)(v)(A) plus (n)(4)(v)(B) plus (n)(4)(v)(C) plus (n)(4)(v)(D) plus (n)(4)(v)(E) of this section.

(H) The ratio for interchange variable expenses is calculated by dividing total theoretical interchange variable expenses, paragraph (n)(4)(v)(A) of this section, by the total theoretical system variable expenses, paragraph (n)(4)(v)(G) of this section.

(I) The ratio for terminal variable expenses is calculated by dividing the total theoretical terminal variable expenses, paragraph (n)(4)(v)(B) plus (n)(4)(v)(C) of this section, by the total theoretical system variable expenses, paragraph (n)(4)(v)(G) of this section.

(J) The ratio for line-haul variable expenses is calculated by dividing total theoretical line-haul variable expenses, paragraph (n)(4)(v)(D) plus (n)(4)(v)(E) of this section, divided by the total theoretical system variable expenses, paragraph (n)(4)(v)(G) of this section.

(K) The ratio for station clerical variable expenses is calculated by dividing total theoretical station clerical variable expenses, paragraph (n)(4)(v)(F) above, by the total theoretical system variable expenses, paragraph (n)(4)(v)(G) above.

(vi) The carrier's total system variable expenses are separated as follows:

(A) Total interchange variable expenses are calculated by multiplying the total system variable expenses, paragraph (n)(4)(i) of this section, by the interchange variable expense ratio, paragraph (n)(4)(v)(H) of this section.

(B) Total terminal variable expenses are calculated by multiplying the total system variable expenses, paragraph (n)(4)(i) of this section, by the terminal variable expense ratio, paragraph (n)(4)(v)(I) of this section.

(C) Total line-haul variable expenses are calculated by multiplying the total system variable expenses, paragraph (n)(4)(i) of this section, by the line-haul variable expense ratio, paragraph (n)(4)(v)(J) of this section.

(D) Total station clerical variable expenses are calculated by multiplying the total system variable expenses, paragraph (n)(4)(i) of this section by the station clerical expense ratio, paragraph (n)(4)(v)(K) of this section.

(vii) The carrier's unit costs shall be determined as follows:

(A) The interchange cost per carload shall be calculated by dividing the total interchange variable expense, paragraph (n)(4)(vi)(A) above by the total number of interchange handlings, paragraph (n)(4)(iii) of this section.

(B) The terminal cost per carload shall be calculated the total terminal variable expenses, paragraph (n)(4)(vi)(B) above, by the total number of terminal handlings, paragraph (n)(4)(ii) of this section.

(C) The line-haul cost per car-mile shall be calculated by dividing the total line-haul variable expenses, paragraph (n)(4)(vi)(C) of this section, by the total number of loaded car-miles.

(D) The modified terminal cost per carload shall be calculated by adding the interchange cost per carload, paragraph (n)(4)(vii)(A) of this section, to the station clerical cost per carload total station clerical variable expense, paragraph (n)(4)(vi)(D) of this section, divided by the total number of terminal handlings, paragraph (n)(4)(ii) of this section].

(viii) The interchange costs shall be calculated by multiplying the interchange cost per carload, paragraph (n)(4)(vii)(A) above, by the number of carloads of traffic interchanged with other railroads.

(ix) The terminal costs shall be calculated by multiplying the modified terminal cost per carload, paragraph (n)(4)(vii)(D) of this section, times the number of carloads which originated or terminated on the branch during the subsidy year. To this amount add the normal terminal cost per carload, paragraph (n)(4)(vii)(B) of this section, times the number of carloads which originated or terminated on the branch that are local to the railroad serving the branch.

(x) The line-haul costs shall be calculated by multiplying the line-haul cost per car-mile, paragraph (n)(4)(vii)(C) of this section, by the loaded car-miles generated off the branch by cars originated or terminated on the branch during the subsidy year.

(5) The railroad shall be entitled to recover the impact of inflation on off-branch costs that occur during the period between the calendar year which is used for developing subsidy year unit costs and the 12 month period covered by the subsidy agreement. Calendar year used in this section shall mean the January 1 to December 31 period used to develop unit costs that are applied to the subsidy year operations. The impact of inflation on off-branch costs shall be calculated as follows:

(i) The railroad shall determine the following calendar year items from its Annual Report Form R-1 that was used in developing unit costs for the subsidy year and company records. (Class II and Class III railroads shall adapt the procedure using similar data from Forms R-2 or R-3 or company records).

(A) Total, railroad's Salaries and Wages, [Schedule 410, col. (b)];

(B) U.S. Government old-age retirement and unemployment insurance taxes (including medicare and supplemental annuities), [Schedule 451, Section (B)];

(C) Employee Health and Welfare expenses, [company records];

(D) Transportation: Train Operations; Locomotive Fuel, Materials tools, supplies and lubricants; plus Transportation: Yard Operations; Lo comotive Fuel, Materials, tools, supplies, fuels, and lubricants, [Schedule 410, col. (c)];

(E) Transportation: Train Operations; Electric Power Purchased or Produced for Motive Power, Materials, tools, fuel and lubricants and Purchased Services; plus Transportation: Yard Operations; Electric Power, Purchased or Produced for Motive Power, Materials, tools, fuels, and lubricants and Purchased Services, [Schedule 410, col. (c) and (d)];

(F) Equipment: Locomotives; Repair and Maintenance, Materials, tools, supplies, fuels, and lubricants; Freight Cars; Repair and Maintenance, Materials, tools, supplies, fuels, and lubricants; plus Transportation; Train Operations; Train Inspection and Lubrication, Materials, tools, supplies, fuels, and lubricants; Train Crews, Materials, tools, supplies, fuels, and lubricants; Servicing Locomotives, Materials, tools, supplies, fuels, and lubricants; plus Yard Operations; Switch Crews, Materials, tools, supplies, fuels, and lubricants; Servicing Locomotives, Materials, tools, supplies, fuels, and lubricants, [Schedule 410, col. (c)];

(G) Railway Tax Accruals (excluding Federal Income Taxes and Payroll Taxes), [Schedule 451, Section (b)];

(H) Total operating expenses, freight portion, [Schedule 410, col. (f)];

(I) Total—All other operating expenses, paragraphs (N)(5)(i)(H) minus the sum of paragraphs (n)(5)(i)(A), (n)(5)(i)(B), (n)(5)(i)(C), (n)(5)(i)(D), (n)(5)(i)(E), and (n)(5)(i)(F).

(ii) The Railroad shall determine the following ratios:

(A) *Employee Compensation Update Ratio.* (*1*) The calendar year average straight-time compensation per hour is determined by: Adding the total straight-time compensation for transportation employees to the total straight-time compensation for train and engine employees; divided by the total straight-time service hours for transportation employees plus the total straight-time service hours for train and engine employees, [ICC *Annual Report of Employees, Service and Compensation, Forms A and B*];

(*2*) The subsidy year average straight-time compensation per hour is determined by: Adding the total straight-time compensation for transportation employees to the total straight-time compensation for train and engine employees, for the twelve months of the subsidy year; divided by the total straight-time service hours for transportation employees plus the total straight-time service hours for train and engine employees, for the twelve months of the subsidy year, [ICC *Monthly Report of Employees, Service and Compensation Forms A and B*];

(*3*) The Employee Compensation Update ratio is determined by dividing the subsidy year average straight-time compensation per hour, paragraph (n)(5)(ii)(A)(*2*); by the calendar year average straight-time compensation per hour, paragraph (n)(5)(ii)(A)(*1*) of this section.

(B) *Payroll Taxes Update Ratio.* (*1*) The calendar year employer contribution rate per hour is determined by: Adding the employer maximum annual tax per employee for Railroad Retirement to the employer paid maximum annual tax per employee for Railroad Unemployment Insurance, [Bureau of the Actuary, U.S. Railroad Retirement Board]; divided by 2080, the average annual number of working hours per year. The quotient is added to the hourly rate for supplemental annuities, [National Railway Labor Conference];

(*2*) The subsidy year employer contribution rate per hour is determined by: Multiplying the employer's monthly rate for Railroad Retirement and Railroad Unemployment Insurance by the maximum monthly individual employee's wage base, respectively, for the twelve months of the subsidy year, [Bureau of the Actuary, U.S. Railroad Retirement Board]; and dividing by 2080, the average annual number of working hours per year. The quotient is added to the hourly rate for supplemental annuities, [National Railway Labor Conference];

(*3*) The Payroll Taxes Update Ratio is determined by: Dividing the subsidy year contribution rate per hour, paragraph (n)(5)(ii)(B)(*2*) by the calendar year contribution rate per hour, paragraph (n)(5)(ii)(B)(*1*) of this section.

(C) *Health and Welfare Costs Update Ratio.* (*1*) Calendar year Health and Welfare costs shall be determined by dividing total monthly costs for each month, company records, by the total employees, middle of the month count for each month, [ICC *Monthly Report of Employees, Service, and Compensation, Forms A and B*]. The total Calendar year health and welfare costs is the sum of the twelve monthly average costs per employee developed in this subsection.

(*2*) Subsidy year Health and Welfare costs are determined by dividing total monthly costs for each month, company records, by total employees, middle of the month count, [ICC *Monthly Report of Employees, Service, and Compensation, Forms A and B*]. The total subsidy year health and welfare costs is the sum of the twelve monthly average costs per employee developed in this subsection.

(*3*) The Health and Welfare Costs Update Ratio is determined by: Dividing the subsidy year costs per employee, paragraph (n)(5)(ii)(C)(*2*) by the calendar year costs per employee, paragraph (n)(5)(ii)(C)(*1*) of this section.

(D) [Reserved]

(E) *Fuel Cost Update Ratio.* (*1*) The calendar year average fuel cost per gallon is determined by: Dividing the cost of Fuel, Diesel Oil, schedule 750, col. (b), by the number of gallons, Diesel Oil, consumed in freight, passenger and yard switching service, schedule 750, col. (b);

(*2*) The subsidy year average fuel cost per gallon is determined by: Dividing the cost of fuel, diesel oil, company records, for the subsidy year, by the number of gallons, diesel oil consumed in freight, passenger and yard switching operations, company records, for the subsidy year.

(*3*) The Fuel Cost Update Ratio is determined by: Dividing the subsidy year fuel cost per gallon, paragraph (n)(5)(ii)(E)(*2*) by the calendar year fuel cost per gallon, paragraph (n)(5)(ii)(E)(*1*) of this section.

(F) *Electric Power Cost Update Ratio.* (*1*) The calendar year cost per kilowatt hour is determined by: Dividing the cost of electric kilowatt hours [schedule 750, col. (c)] by the kilowatt hours consumed by freight, passenger, and yard switching operations [schedule 750, col. (c)];

(*2*) The subsidy year cost per kilowatt hour is determined by: Dividing the cost of electric kilowatt hours [company records], by the kilowatt hours consumed by freight, passenger, and yard switching operations [company records];

(*3*) The Electric Power Cost Ratio is determined by: Dividing the subsidy year cost per kilowatt hour, paragraph (n)(5)(ii)(F)(*2*) by the calendar year cost per kilowatt hour, paragraph (n)(5)(ii)(F)(*1*) of this section.

(G) *Materials and Supplies Cost Update Ratio.* (*1*) The calendar year materials and supplies index is an average of the four calendar year quarterly indices [Association of American Railroads (AAR), Economics and Finance Department, series Quarterly Material, Price and Wages (QMPW), applicable region].

(*2*) The subsidy year materials and supplies ratio is an average of the four subsidy year quarterly indices [Association of American Railroads (AAR), Economics and Finance Department, Series Quarterly Material, Price, and Wages (QMPW), applicable region].

(*3*) The Materials and Supplies Cost Update Ratio is determined by: Dividing the subsidy year ratio, paragraph (n)(5)(ii)(G)(*2*) by the calendar year ratio, paragraph (n)(5)(ii)(G)(*1*) of this section.

(iii) The Railroad shall determine the following subsidy year expense items:

(A) Total subsidy year salaries and wages [calendar year total railroad salaries and wages, paragraph (n)(5)(i)(A) multiplied by the Employee Compensation Update Ratio, paragraph (n)(5)(ii)(A)(*3*)].

(B) U.S. Government old-age retirement and unemployment insurance (including medicare and supplemental annuities), [calendar year U.S. Government old-age retirement and unemployment insurance (including medicare and supplemental annuities), paragraph (n)(5)(i)(B) multiplied by the Payroll Taxes Update Ratio, paragraph (n)(5)(ii)(B)(*3*)].

(C) Employee Health and Welfare Expenses [calendar year, Employee

Health and Welfare expenses, paragraph (n)(5)(i)(C) multiplied by the Health and Welfare Costs Update Ratio, paragraph (n)(5)(ii)(C)(*3*)].

(D) Total employee compensation would be the sum of: The subsidy year total railroad's salaries and wages, paragraph (n)(5)(iii)A) of this section; plus U.S. Government old age retirement and unemployment insurance (including medicare and supplemental annuities), paragraph (n)(5)(iii)(B) of this section; plus Employee Health and Welfare Expenses, paragraph (n)(5)(iii)(C) of this section.

(E) Transportation: Train Operations; Locomotive Fuel, Materials, tools supplies, fuels, and lubricants; plus Transportation: Yard Operations: Locomotive Fuel, Materials, tools, supplies, fuels, and lubricants [calendar year expenses, paragraph (n)(5)(i)(D) multiplied by the Fuel Cost Update Ratio, paragraph (n)(5)(ii)(E)(*3*)].

(F) Transportation: Train Operations; Electric Power Purchased or Produced for Motive Power, Materials, tools, supplies, fuels, and lubricants and Purchased Services; plus Transportation: Yard operations: Electric Power Purchased or Produced for Motive Power, Materials, tools, supplies, fuels, and lubricants and Purchased Services [calendar year expenses, paragraph (n)(5)(i)(E) multiplied by the Electric Power Cost Update Ratio, paragraph (n)(5)(ii)(F)(*3*)].

(G) Equipment: Locomotives; Repair and Maintenance, Materials, tools, supplies, fuels, and lubricants; Freight Cars; Repair and Maintenance, Materials, tools, supplies, fuels, and lubricants; plus Transportation: Train Operations; Train Inspection and Lubrication, Materials, tools, supplies, fuels, and lubricants; Train Crews, Materials, tools, supplies, fuels, and lubricants; Servicing Locomotives, Materials, tools, supplies, fuels, and lubricants; plus Transportation Yard Operations; Switch Crews, Materials, tools, supplies, fuels, and lubricants; Servicing Locomotives, Materials, tools, supplies, fuels, and lubricants, [calendar year expenses, paragraph (n)(5)(i)(F) multiplied by the Materials and Supplies Costs Update Ratio, Paragraph (n)(5)(ii)(G)(*3*)].

(H) Railway Tax Accruals (excluding Federal Income Taxes and Payroll taxes), [calendar year expenses, paragraph (n)(5)(i)(G) multiplied by 1.0].

(I) Total all other operating expenses, [Total calendar year all other operating expenses, paragraph (n)(5)(i)(I) multiplied by 1.0].

(iv) The railroad shall develop a composite index as follows:

(A) Total calendar year expenses [paragraph (n)(5)(i)(H)] plus calendar year Railway Tax Accruals (excluding Income Taxes and Payroll Taxes), paragraph (n)(5)(i)(G)];

(B) Total subsidy year expenses [sum of paragraphs (n)(5)(iii)(D), (n)(5)(iii)(E), (n)(5)(iii)(F), (n)(5)(iii)(G), (n)(5)(iii)(H), (n)(5) (iii)(I)].

(C) Composite Index [Total subsidy year expenses, paragraph (n)(5)(iv)(B), divided by total calendar year operating expenses, paragraph (n)(5)(iv)(A).

(v) The composite index, paragraph (n)(5)(iv)(C) above, shall be applied to the off-branch costs for twelve months of the subsidy year, as provided in § 1155.7(n). The difference between the off-branch costs as increased for inflation and the off-branch costs previously calculated by the railroad shall be included in the railroad's year-end Financial Status Report, as provided in § 1155.5(a).

(o) *Reasonable Management Fee.* Four and one-half percent of the total annual revenues attributable to the branch as determined pursuant to § 1155.6 shall be paid to the railroad as a reasonable management fee. If the railroad and the person offering the subsidy agree to an additional fee designed as an incentive to maximize revenues, minimize expenses, promote efficient service, or otherwise achieve public interest objectives, the railroad shall be paid such fee as determined in accordance with such agreement.

(p) *Return on investment—locomotives.* The return on investment in locomotives shall be separated between yard and road with a further separation between diesel and other (electric). The return on investment for each category of locomotives shall be calculated in accordance with the following procedure.

(1) The net investment for each category of locomotives shall be determined from the carrier's records.

(2) The cost of capital used in the calculation of return on investment for locomotives shall be the rate of interest developed for use in form 2 of the unrevised rail form A of the railroad.

(3) The return on investment for all categories of locomotives is calculated by multiplying the net investment in step (1) above by the costs of capital as determined in step (2).

(4) The return on investment shall be assigned to the branch on the basis of the ratio of locomotive unit hours on the branch to total locomotive unit hours on the system for the appliable classification of locomotive.

[43 FR 1692, Jan. 11, 1978, as amended at 43 FR 8530, Mar. 2, 1978; 43 FR 30065, July 13, 1978; 44 FR 35228, June 19, 1979; 45 FR 19560, Mar. 26, 1980; 45 FR 27447, Apr. 23, 1980. Redesignated at 47 FR 49582, Nov. 1, 1982, and amended at 49 FR 2901, Jan. 24, 1984]

§ 1155.8 Apportionment rules for the assignment of expenses to on-branch costs.

The accounts specified under § 1155.7(a), (b), (c), and (d) as having an assignment basis other than "Actual" shall be apportioned according to the rules contained in this section.

(a) *Maintenance of way and structures*—(1) *Roadway machines.* All accounts designated XX-13-36 shall be assigned to the branch on the basis of the average repair cost, for each type of machine, included in the daily rental fees charged by the operating railroad or as published by the General Manager's Association of Chicago (GMA), based on the actual number of days each type of machine is used on the branch.

(2) *Small tools and supplies.* All accounts designated XX-13-37 shall be assigned to the branch as follows: (i) The costs of supplies, consumed in the operation of roadway machines, shall be assigned to the branch on the basis of the average costs of supplies per day, included in the daily rental fees charged by the operating railroad or as published by the GMA, multiplied by the actual number of days that the machine is used on the branch; (ii) the costs of small tools shall be assigned to the branch on the basis of the ratio that the branch amounts in Accounts 11-11-10 through 11-11-17 and 11-11-48 plus 11-12-10 through 11-12-17 and 11-12-48 bear to the railroad's system total for the same accounts.

(3) *Fringe benefits.* Fringe benefits shall be assigned to the branch separated between running, switching and other, on the ratio that the total branch salaries and wages bear to the total system salaries and wages for each activity as follows:

(i) *Fringe Benefits—Running, Account 12-11-00,* total of all 11-11-XX accounts branch to system;

(ii) *Fringe Benefits—Switching, Account 12-12-00,* total of all 11-12-XX accounts branch to system; and

(iii) *Fringe Benefits—Other, Account 12-13-00,* total of all 11-13-XX accounts branch to system.

(b) *Maintenance of equipment*—(1) *Locomotive repairs and maintenance.* All accounts designated XX-21-41 shall be separated between yard and road with a further separation between diesel and other (electric). The costs for these accounts for yard locomotives shall be assigned to the branch separately for diesel and electric locomotives on the basis of the ratio of branch diesel and electric yard locomotive unit-hours to the total system diesel and electric yard locomotive unit-hours. The costs for these accounts for road locomotives shall be assigned to the branch separately for diesel and electric locomotives on the basis of the ratio of branch diesel and electric locomotive gross ton-miles in road service to the total system diesel and electric locomotive gross ton-miles in road service. The costs assigned under these accounts for specialized equipment devoted exclusively to branch line service shall be the actual costs for the specific equipment used.

(2) *Locomotive Depreciation—Account 61-22-00,* shall be separated between yard and road with a further separation between diesel and other (electric). The cost shall be assigned to the branch on the ratio of locomotive unit hours on the branch to the total locomotive unit hours on the system

for the particular type of locomotive used to serve the branch The cost assigned under this account for specialized equipment devoted exclusively to branch line service shall be the actual cost for the specific equipment used.

(3) *Fringe benefits.* Fringe benefits for locomotives and other equipment shall be assigned to the branch on the ratio that the total branch salaries and wages bear to the system total salaries and wages for each type of equipment as follows:

(i) *Locomotives—Account 12-21-00,* total of all 11-21-XX accounts branch to system.

(ii) *Other Equipment—Account 12-23-00,* total of all 11-23-XX accounts branch to system.

(iii) Fringe benefits for freight cars shall be calculated by first estimating the total in Account 11-22-42, Freight car repairs—salaries and wages, that is included in the total on branch costs for freight cars as determined from the car day and car mile cost calculations, in § 1155.77(g) of these regulations.

To this amount is added the branch totals in the balance of all 11-22-XX accounts. The ratio of this total branch amount to the system total for all 11-22-XX accounts is applied to Account 12-22-00, Fringe Benefits—Freight Cars.

(c) *Transportation*—(1) *Train operations*—(i) *Engine Crews-Materials, Account 21-31-56; Train Crews-Materials, Account 21-31-57; Train Inspection and Lubrication-Salaries and Wages, Account 11-31-62; and Train Inspection and Lubrication-Materials, Account 21-31-62.* If the branch is served by a local/way or through train, the costs in these accounts shall be assigned to the branch on the weighted ratio of the loaded freight train cars on the branch to the total system loaded freight train cars, and the loaded and empty car-miles on the branch to the total system loaded and empty car-miles. This shall be calculated as follows:

(A) To determine the car-mile portion of these accounts,

(*1*) Multiply the total amounts in these accounts (from the R-1 Annual Report, Schedule 410) by 69 percent (the ratio of train-mile and running expenses from Rail Form A),

(*2*) Divide the amount in paragraph (c)(1)(i)(A)(*1*) of this section by the total system loaded and empty car-miles, and

(*3*) Multiply the car-mile unit cost factor from paragraph (c)(1)(i)(A)(*2*) of this section by the on-branch car-miles (loaded and empty).

(B) To determine the carload portion of these accounts,

(*1*) Multiply the total amounts in these accounts by 31 percent (the ratio of terminal expenses from Rail Form A),

(*2*) Divide the amount in paragraph (c)(1)(i)(B)(*1*) of this section by the total system carloads, and

(*3*) Multiply the carload unit cost factor from paragraph (c)(1)(i)(B)(*2*) of this section by the on branch carloads.

(C) To determine the total costs assignable to the branch for these accounts, add the amounts developed in paragraphs (c)(1)(i)(A)(*3*) and (c)(1)(i)(B)(*3*) of this section.

(ii) *Locomotive fuel.* All accounts designated XX-31-67 shall be assigned to the branch line in accordance with the following procedure. The dollar amounts used in the determination of locomotive fuel costs shall be based on data contained in the most recent publication issued by the General Managers Association (GMA) relating to the rental of locomotives. The total number of locomotive unit hours incurred by the locomotive(s) shall then be categorized according to the applicable GMA horsepower classification group. The fuel cost is derived from the Repairs and Supplies Expenses element of the locomotive rental rates published by the GMA. The fuel cost per locomotive unit hour shall be determined for each GMA horsepower classification group by multiplying the latest GMA fuel cost percentage by the Repairs and Supplies Expense per hour included in each group. The fuel cost per locomotive unit hour for each applicable GMA group shall be multiplied by the number of locomotive unit hours incurred in serving the branch by locomotives of that GMA horsepower classification group. The total cost developed under this procedure for each horsepower classification shall be the locomotive fuel cost assignable to the branch line.

(iii) *Electric power purchased or produced for motive power.* All accounts designated XX-31-68 shall be assigned to the branch on the ratio of road electric locomotive unit hours on the branch to the total system road electric locomotive unit hours.

(iv) *Servicing locomotives.* All accounts designated XX-31-69 shall be assigned to the branch on the ratio of road locomotive unit miles on the branch to the total system road locomotive unit miles.

(2) *Yard operations*—(i) *Switch Crews—Materials, Account 21-32-64,* and *Servicing Locomotives,* all accounts designated XX-32-69. The costs for these accounts shall be assigned to the branch on the ratio of yard locomotive unit hours on the branch to the system total yard locomotive unit hours.

(ii) *Locomotive fuel.* All accounts designated XX-32-67 shall be assigned to the branch on the ratio of yard diesel locomotive unit hours on the branch to the total system yard diesel locomotive unit hours.

(iii) *Electric power purchased or produced for motive power.* All accounts designated XX-32-68 shall be assigned to the branch on the ratio of yard electric locomotive unit hours on the branch to the total system yard electric locomotive unit hours.

(3) *Administrative support operations*—(i) *Loss and damage claims processing.* All accounts designated XX-35-78 shall be assigned to the branch on the ratio of the number of claims processed for loss or damage occurring on the branch to the total number of claims processed by the railroad.

(4) *Transportation fringe benefits.* Fringe benefits shall be assigned to the branch separated between train operations, yard operations, train and yard operations common, specialized service operations, and administrative support operations. The costs for each activity shall be assigned to the branch on the ratio that the total branch salaries and wages bear to the total system salaries and wages for each activity shown below.

(i) Train operations, account 12-31-00, total of all 11-31-XX accounts branch to system.

(ii) Yard operations, account 12-32-00, total of all 11-32-XX accounts branch to system.

(iii) Train and yard operations common, account 12-33-00, total of all 11-33-XX accounts branch to system.

(iv) Specialized service operations, account 12-34-00, total of all 11-34-XX accounts branch to system.

(v) Administrative support, account 12-35-00, total of all 11-35-XX accounts branch to system.

(d) *General administrative.* (1) Fringe benefits, account 12-61-00, shall be assigned to the branch on the ratio that the total branch salaries and wages in all 11-61-XX accounts bear to the system total salaries and wages in all 11-61-XX accounts.

(e) The railroad shall be entitled to recover the impact of inflation on on-branch costs that occur during the period between the calendar year which is used for developing subsidy year unit costs and the 12 month period covered by the subsidy agreement. Calendar year used in this section shall mean the January 1, to December 31, period used to develop unit costs that are applied to the subsidy year operations.

(1) The updating procedures described in paragraphs (e)(1)(A), (e)(1)(B) and (e)(1)(C), of this section, shall be applied to the applicable categories of total on-branch costs as provided in § 1155.8(b) and (c). The on-branch updated costs shall be calculated as follows:

(A) The increase in fuel costs shall be determined by multiplying the on-branch costs for Locomotive Fuel-Materials, [account 21-31-67 plus account 21-32-67] by the Fuel Cost Update Ratio, [Section 1155.7(n)(5)(ii)(E)(*3*), minus one].

(B) The increase in the Electric Power Costs shall be determined by: Multiplying the on-branch costs for Electric Power Purchased or Produced-Materials, and Purchased Services [accounts, 21-31-68, 21-32-68, 41-31-68 and 41-32-68] by the Electric Power Cost Update Ratio, [Section 1155.7(n)(5)(ii)(F)(*3*), minus one].

(C) The increase in materials and supplies cost shall be determined by multiplying the on-branch materials and supplies costs, [the sum of accounts: Engine Crews-Materials (21-31-56); plus Train Crews-Materials (21-31-57); plus Train Inspection and Lubrication-Materials (21-31-62); plus Locomotive Repairs and Maintenance-Materials (21-21-41); plus Servicing Locomotive-Materials—(21-31-69; plus Switch Crews-Materials (21-32-64); plus Yard Operations: Servicing of Locomotives-Material (21-32-69)] by the Materials and Supplies costs Update Ratio, [Section 1155.7(n)(5)(ii)(G)(*3*), minus one].

(2) The railroad shall recalculate on-branch car-day and car-mile costs as described in § 1155.7(g) to reflect inflation occurring in Materials-Freight Cars-Repairs and Maintenance Account (21-22-42) for the period between the calendar year used for developing subsidy year unit costs and the 12-month period covered by the subsidy agreement.

(A) The increase in freight car repairs and maintenance costs shall be determined by multiplying the on-branch costs for these materials [Account 21-22-42—Materials-Freight Cars-Repairs and Maintenance] by the Materials and Supplies Cost Update Ratio [section 1155.7(n)(5)(ii)(G)(*3*)].

(B) The amount in paragraph (e)(1)(A) is substituted for Account 21-22-42—Freight Train Car-Repair and Maintenance calculated in § 1155.7(g). Then, the total freight train car costs per car-day and car-mile are recalculated. The recalculated car-day and car-mile costs are then applied to the appropriate service units incurred during the subsidy year, using the procedure described in § 1155.7(g).

(C) The railroad shall calculate the net increase in freight train car costs by subtracting the on-branch freight train car costs, as provided in § 1155.7(G), from the adjusted amount described in paragraph (e)(2)(B).

(3) The net inflationary impact developed for a on-branch costs described in paragraphs (e)(1)(A), (e)(1)(B), (e)(1)(C) and (e)(2)(C) shall be included in the railroad's year-end Financial Status Report as provided in § 1155.5(a).

[43 FR 1692, Jan. 11, 1978, as amended at 45 FR 27449, Apr. 23, 1980; 47 FR 5008, Feb. 3, 1982; 47 FR 25974, June 16, 1982. Redesignated at 47 FR 49582, Nov. 1, 1982, and amended at 49 FR 7241, Feb. 28, 1984]

§ 1155.9 Return on the value of rail properties.

(a) *Valuation of rail properties.* The value of the rail properties on a branch shall be determined in accordance with the following:

(1) Only the following properties on a branch may be considered:

(i) Those that are used and useful to provide the rail services requested by the person offering a subsidy.

(ii) In the absence of a request for specific services by that person, those properties that are used and useful to provide the rail service performed on the branch at the time the final system plan became effective, or if no service was being performed at that time, the services that were last performed on the branch.

(2) The value of the properties shall be their net liquidation value for their highest and best use, consistent with applicable zoning and land use regulations, determined by computing their current market value for other than rail transportation purposes, less all costs of dismantling, and disposition of improvements necessary to make the remaining property available for its highest and best use.

(3) If the railroad and person offering a subsidy cannot, within a period of time that either of them considers reasonable after the beginning of negotiations for the payment of the subsidy, agree on the properties that are used and useful or the net liquidation value, or both, the one that considers that a reasonable period of time has elapsed may notify the other of its intention to have the matter arbitrated. Each of the parties shall then appoint a representative and the representatives shall select an arbitrator or arbitrators mutually acceptable to them. The decision of the arbitrator or arbitrators shall be final.

(4) If either party fails to appoint a representative within five days after receiving notice from the other party of its representative, or if the appointed representatives fail, within five

days after the last one of them is appointed, to agree upon a mutually acceptable arbitrator or arbitrators, either party may submit the matter for arbitration to the American Arbitration Association pursuant to its commercial arbitration rules, and the decision of its arbitrator or arbitrators shall be final.

(5) In considering the value of properties under this section, the arbitrator or arbitrators shall consider, among other factors, any bona fide offer for the properties, or a part thereof, recent sales of adjoining or similar properties, any available appraisals, by a reputable appraiser, of the properties, or a part thereof.

(6) If the person offering a subsidy is a public body, each meeting of an arbitrator or arbitrators with the parties for the purpose of receiving information or evidence or to hear arguments or views shall be open to the public. Any interested member of the public may file written views, argument, or information with the arbitrator or arbitrators at any time within three days after the closing of the sessions that are open to the public.

(b) *Reasonable return on the value of the properties.* The reasonable return on the value of rail properties, as determined under § 1155.9(a) shall be the interest rate that is equal to the publicly quoted yield, to maturity or earliest call date, on the first business day of the month in which the subsidy agreement is entered into, for U.S. Treasury bonds or notes maturing or having an earliest call date approximately coterminous with the end of the subsidy period. United States Treasury bonds, redeemable at par before call or maturity for the sole purpose of applying the proceeds to payment of Federal estate taxes, and Treasury notes Series EA or EO shall be excluded from consideration for this purpose.

APPENDIX I—FORMAT FOR PRESENTATION OF SUBSIDY ESTIMATE

The following information is required to be furnished under § 1155.3(a)(1). All data shall be developed in accordance with the methodology set forth in § 1155.3.

REVENUES ESTIMATED

1. Freight revenues.
2. All other revenues and income.
3. Total estimated revenues (line 1 plus 2).

AVOIDABLE COST ESTIMATES

4. On-branch costs (lines 4A through 4L):
A. Maintenance of way and structures.
B. Rehabilitation.
C. Maintenance of equipment.
D. Transportation.
E. General administrative expenses.
F. Deadheading, taxi, and hotel costs.
G. Overhead movement costs.
H. Freight car costs.
I. Taxes.
J. Administrative fee.
K. Casualty reserve account.
L. Termination costs.
5. Off-branch costs (ratio times line 1).
6. Management fee.
7. Total avoidable cost estimate (lines 4, 5, and 6).

RETURN ON VALUE ESTIMATE

8. Valuation of property.
9. Rate of return.
10. Total return on value (line 8 times line 9).

ESTIMATED SUBSIDY PAYMENT

11. Estimated subsidy payment (line 3 minus lines 7 and 10).
12. Preexisting subsidy agreement payments included in line 2 above.

[43 FR 1692, Jan. 11, 1978, as amended at 43 FR 30065, July 13, 1978. Redesignated at 47 FR 49582, Nov. 1, 1982]

APPENDIX II—FORMAT FOR FINANCIAL STATUS REPORTS

The following information is required to be furnished under § 1155.4(b). All data shall be developed in accordance with the methodology set forth in §§ 1155.6, 1155.7, and 1155.9. The actual data for the year to date and a projection to the end of the subsidy year shall be shown for each item, except that off-branch costs shall be estimated during the subsidy year by applying the ratio developed in the interim formula under § 1155.3(d) to the actual revenues shown in item 1.

REVENUES

1. Freight revenues.
2. All other revenues and income.
3. Total revenues (line 1 plus line 2).

AVOIDABLE COST

4. On-branch costs (lines 4A through 4L):
A. Maintenance of way and structures.

B. Rehabilitation.
C. Maintenance of equipment.
D. Transportation.
E. General administrative expenses.
F. Deadheading, taxi, and hotel costs.
G. Overhead movement costs.
H. Freight car costs.
I. Taxes.
J. Administrative fee.
K. Casualty reserve account.
L. Termination costs.
5. Off-branch costs.
6. Management fee.
7. Total avoidable cost (lines 4, 5, and 6).

RETURN ON VALUE

8. Valuation of property.
9. Rate of return.
10. Total return of value (line 8 times line 9).

SUBSIDY PAYMENT

11. Subsidy payment (line 3 minus lines 7 and 10).
12. Preexisting subsidy agreement payments included in line 2 above.

[43 FR 1692, Jan. 11, 1978, as amended at 43 FR 30065, July 13, 1978. Redesignated at 47 FR 49582, Nov. 1, 1982]

PART 1156—SUBMISSION OF COST DATA TO JUSTIFY REIMBURSEMENT FOR DIRECTED SERVICE

Sec.

1156.1 Scope of rules in this part.
1156.2 Cost form and certification.
1156.3 Optional Cash Funding Procedures.

AUTHORITY: 49 U.S.C. 10321 and 10905; 5 U.S.C. 559.

SOURCE: 44 FR 6157; Jan. 31, 1979, unless otherwise noted. Redesignated at 47 FR 49582, Nov. 1, 1982.

§ 1156.1 Scope of rules in this part.

The rules in this part govern the procedures for the submission of costs and revenues to be followed by carriers subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105, subtitle IV, title 49, U.S. Code, which are directed by the Commission to perform service over the lines of other carriers under the provisions of 49 U.S.C. 11125 (formerly 49 U.S.C. 1(16)(b)). The Commission's report in *Regional Rail Reorg. Act—Submission of Cost Data,* 348 I.C.C. 251 (1975), should be used by directed carriers for guidance in the preparation of the cost form. The report and its appendix set forth the Commission's policy as to the costs and revenues, incurred in or attributable to the conduct of directed operations, are allowable for inclusion in the cost form. Only such allowable costs and revenues will be considered by the Commission in its computation of payments due to the directed carrier under the provisions of section 11125.

§ 1156.2 Cost form and certification.

The expenses and revenues incurred in the conduct of directed service shall be recorded in accordance with the cost form and instructions below:

INSTRUCTIONS TO COST FORM

1. Enter in column (7) the expenses directly assignable to the directed traffic moved. This includes wages, rentals and other expenses paid or incurred by the applicant and chargeable only to the directed traffic.
2. Enter in column (8) the portion of common expenses allocable to the directed traffic. Common expenses are those expenses paid or incurred for the movement of the directed traffic which are common or jointly incurred for the movement of other traffic. All expenses should be assigned directly wherever possible. Expenses not directly assignable should be apportioned on the basis of the factor suggested in column (10) or if necessary, on the basis of a more readily available and equitable factor, if such use is justified to the Commission. The relationship of the carriers' own revenues and the directed traffic revenues is an acceptance apportionment factor in cases where there are no other available apportionment factors.
3. Enter in column (9) the total of columns (7) and (8).
4. The cost of rehabilitation of the line necessary to permit operation should be shown in the way and structures accounts. Expenditures for substantial improvements shall require authorization by the Commission.
5. Expenses included in lines 53, 54, 55, 131, 140, 159, 169, 176, 183, 190, 249, and 262 should be identified on a separate sheet.

Cost Form

Line No.	Account Name	Account Number					Directed Traffic			
		Salaries and Wages	Materials and Supplies	Purchased Services	General	Total Cols. (2)-(5)	Direct	Common Apportioned	Total Cols. (7)+(8)	Suggested Apportionment Factors
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
	Operating Expenses									
	Way and Structures									
1	Administration—Track.	11-13-02	21-13-02	41-13-02	61-13-02		XXX	XXX	XXX	XXX
2	Roadway Maint.—Running.	11-11-10	21-11-10	39/40/41-11-10	61-11-10		XXX	XXX	XXX	XXX
3	Roadway Maint.—Switching.	11-12-10	21-12-10	39/40/41-12-10	61-12-10		XXX	XXX	XXX	XXX
4	Road Property Damaged—Running.	11-11-48	21-11-48	39/40/41-11-48	61-11-48		XXX	XXX	XXX	XXX
5	Road Property Damaged—Switching.	11-12-48	21-12-48	39/40/41-12-48	61-12-48		XXX	XXX	XXX	XXX
6	Ties—Running	XXX	21-11-13	XXX	XXX		XXX	XXX	XXX	XXX
7	Ties—Switching	XXX	21-12-13	XXX	XXX		XXX	XXX	XXX	XXX
8	Rails—Running	XXX	21-11-14	XXX	XXX		XXX	XXX	XXX	XXX
9	Rails—Switching	XXX	21-12-14	XXX	XXX		XXX	XXX	XXX	XXX
10	Other Track Material—Running.	XXX	21-11-15	XXX	XXX		XXX	XXX	XXX	XXX
11	Other Track Material—Switching.	XXX	21-12-15	XXX	XXX		XXX	XXX	XXX	XXX
12	Ballast—Running	XXX	21-11-16	XXX	XXX		XXX	XXX	XXX	XXX
13	Ballast—Switching	XXX	21-12-16	XXX	XXX		XXX	XXX	XXX	XXX
14	Track Laying & Surfacing—Running.	11-11-17	21-11-17	39/40/41-11-17	61-11-17		XXX	XXX	XXX	XXX
15	Track Laying & Surfacing—Switching.	11-12-17	21-12-17	39/40/41-12-17	61-12-17		XXX	XXX	XXX	XXX
16	Total—Ls. 1 thru 15									Equated Track Miles
17	Administration—Signals.	11-13-04	21-13-04	41-13-04	61-13-04		XXX	XXX	XXX	XXX
18	Station and Office Bldgs.	11-13-23	21-13-23	39/40/41-13-23	61-13-23		XXX	XXX	XXX	XXX
19	Motor Veh. Loading & Distribution Facilities.	11-13-33	21-13-33	39/40/41-13-33	61-13-33		XXX	XXX	XXX	XXX
20	Facilities for Other Specialized Ser. Opns.	11-13-35	21-13-35	39/40/41-13-35	61-13-35		XXX	XXX	XXX	XXX
21	Signals & Interlockers—Running.	11-11-19	21-11-19	39/40/41-11-19	61-11-19		XXX	XXX	XXX	XXX
22	Signals and Interlockers—Switching.	11-12-19	21-12-19	39/40/41-12-19	61-12-19		XXX	XXX	XXX	XXX
23	Total—Ls. 17 thru 22.									Carloads Handled
24	Administration—Communications.	11-13-05	21-13-05	41-13-05	61-13-05		XXX	XXX	XXX	XXX
25	Loco. Serv. Facilities	11-13-27	21-13-27	39/40/41-13-27	61-13-27		XXX	XXX	XXX	XXX
26	Communication Systems.	11-13-20	21-13-20	39/40/41-13-20	61-13-20		XXX	XXX	XXX	XXX
27	Total—Ls. 24 thru 26.									Revenue Tons

COST FORM—Continued

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Account Number: Materials and Supplies (3)	Account Number: Purchased Services (4)	Account Number: General (5)	Account Number: Total Cols. (2)–(5) (6)	Directed Traffic: Direct (7)	Directed Traffic: Common Apportioned (8)	Directed Traffic: Total Cols. (7)+(8) (9)	Directed Traffic: Suggested Apportionment Factors (10)
28	Shop Bldgs.—Locomotives.	11-13-24	21-13-24	39/40/41-13-24	61-13-24		XXX	XXX	XXX	XXX
29	Shop Bldgs.—Freight Cars.	11-13-25	21-13-25	39/40/41-13-25	61-13-25		XXX	XXX	XXX	XXX
30	Shop Bldgs.—Other Equip.	11-13-26	21-13-26	39/40/41-13-26	61-13-26		XXX	XXX	XXX	XXX
31	Road Property Damaged—Other.	11-13-48	21-13-48	39/40/41-13-48	61-13-48		XXX	XXX	XXX	XXX
32	Total—Ls. 28 thru 31.									Total Repair Expenses
33	Misc. Bldgs. & Structures.	11-13-28	21-13-28	39/40/41-13-28	61-13-28		XXX	XXX	XXX	XXX
34	Other Marine Terminals.	11-13-32	21-13-32	39/40/41-13-32	61-13-32		XXX	XXX	XXX	XXX
35	Coal Terminals	11-13-29	21-13-29	39/40/41-13-29	61-13-29		XXX	XXX	XXX	XXX
36	Ore Terminals	11-13-30	21-13-30	39/40/41-11-30	61-13-30		XXX	XXX	XXX	XXX
37	Totals—Ls. 33 thru 36.									Miles of Rd. Trailers Handled, Loaded & Empty
38	TOFC/COFC Terminals.	11-13-31	21-13-31	39/40/41-13-31	61-13-31					
39	Administration—Bridges & Bldgs.	11-13-03	21-13-03	41-13-03	61-13-03		XXX	XXX	XXX	XXX
40	Tunnels & Subways—Running.	11-11-11	21-11-11	39/40/41-11-11	61-11-11		XXX	XXX	XXX	XXX
41	Tunnels & Subways—Switching.	11-12-11	21-12-11	39/40/41-12-11	61-12-11		XXX	XXX	XXX	XXX
42	Bridges & Culverts—Running.	11-11-12	21-11-12	39/40/41-11-12	61-11-12		XXX	XXX	XXX	XXX
43	Bridges & Culverts—Switching.	11-12-12	21-12-12	39/40/41-12-12	61-12-12		XXX	XXX	XXX	XXX
44	Total—Ls. 39 thru 43.									Equated Track Miles
45	Sum of Ls. 16, 23, 27, 32, 37, 38, and 44.									XXX
46	Administration—Other.	11-13-06	21-13-06	41-13-06	61-13-06		XXX	XXX	XXX	XXX
47	Fringe Benefits—Running.	XXX	XXX	XXX	12-11-00		XXX	XXX	XXX	XXX
48	Fringe Benefits—Switching.	XXX	XXX	XXX	12-12-00		XXX	XXX	XXX	XXX
49	Fringe Benefits—Other.	XXX	XXX	XXX	12-13-00		XXX	XXX	XXX	XXX
50	Casualties & Insurances—Running.	XXX	XXX	XXX	52/53-11-00		XXX	XXX	XXX	XXX

COST FORM—Continued

Line No.	Account Name	Account Number					Directed Traffic			
		Salaries and Wages	Materials and Supplies	Purchased Services	General	Total Cols. (2)-(5)	Direct	Common Apportioned	Total Cols. (7)+(8)	Suggested Apportionment Factors
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
51	Casualties & Insurances—Switching.	XXX	XXX	XXX	52/53-12-00		XXX	XXX	XXX	XXX
52	Casualties & Insurances—Other.	XXX	XXX	XXX	52/53-13-00		XXX	XXX	XXX	XXX
53	Other—Running	11-11-90	21-11-99	41-11-99	61-11-90		XXX	XXX	XXX	XXX
54	Other—Switching	11-12-99	21-12-99	41-12-99	61-12-99		XXX	XXX	XXX	XXX
55	Other—Other	11-13-99	21-13-99	41-13-99	61-13-99		XXX	XXX	XXX	XXX
56	Total—Ls. 46 thru 55.									Line 45
57	Depreciation—Running.	XXX	XXX	XXX	62-11-00		XXX	XXX	XXX	XXX
58	Depreciation—Switching.	XXX	XXX	XXX	62-12-00		XXX	XXX	XXX	XXX
59	Depreciation—Other	XXX	XXX	XXX	62-13-00		XXX	XXX	XXX	XXX
60	Roadway Machines	11-13-36	21-13-36	39/40/41-13-36	61-13-36		XXX	XXX	XXX	XXX
61	Highway Grade Crossings—Running.	11-11-22	21-11-22	39/40/41-11-22	61-11-22		XXX	XXX	XXX	XXX
62	Highway Grade Crossings—Switching.	11-12-22	21-12-22	39/40/41-12-22	61-12-22		XXX	XXX	XXX	XXX
63	Total—Ls. 57 thru 62.									Miles of Road
64	Electric Power Systems.	11-13-21	21-13-21	39/40/41-13-21	61-13-21					Electric Locomotive Unit Miles or Line 96, 105, & 116
65	Joint Facility—Debit—Running.	XXX	XXX	37-11-00	XXX		XXX	XXX	XXX	XXX
66	Joint Facility—Debit—Switching.	XXX	XXX	37-12-00	XXX		XXX	XXX	XXX	XXX
67	Joint Facility—Debit—Other.	XXX	XXX	37-13-00	XXX		XXX	XXX	XXX	XXX
68	Joint Facility—(Credit)—Running.	XXX	XXX	38-11-00	XXX		XXX	XXX	XXX	XXX
69	Joint Facility—(Credit)—Switching.	XXX	XXX	38-12-00	XXX		XXX	XXX	XXX	XXX
70	Joint Facility—(Credit)—Other.	XXX	XXX	38-13-00	XXX		XXX	XXX	XXX	XXX
71	Total—Ls. 65 thru 70.									Miles of Track
72	Small Tools & Supplies.	11-13-37	21-13-37	39/40/41-13-37	61-13-37		XXX	XXX	XXX	XXX
73	Snow Removal	11-13-38	21-13-38	30/40/41-13-38	61-13-38		XXX	XXX	XXX	XXX
74	Lease Rentals—Debit—Running.	XXX	XXX	31-11-00	XXX		XXX	XXX	XXX	XXX
75	Lease Rentals—Debit—Switching.	XXX	XXX	31-12-00	XXX		XXX	XXX	XXX	XXX
76	Lease Rentals—Debits—Other.	XXX	XXX	31-13-00	XXX		XXX	XXX	XXX	XXX
77	Lease Rentals—(Credit)—Running.	XXX	XXX	32-11-00	XXX		XXX	XXX	XXX	XXX

COST FORM—Continued

Line No.	Account Name	Account Number					Directed Traffic			
		Salaries and Wages	Materials and Supplies	Purchased Services	General	Total Cols. (2)-(5)	Direct	Common Apportioned	Total Cols. (7)+(8)	Suggested Apportionment Factors
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
78	Lease Rentals—(Credit)—Switching.	XXX	XXX	32-12-00	XXX		XXX	XXX	XXX	XXX
79	Lease Rentals—(Credit)—Other.	XXX	XXX	32-13-00	XXX		XXX	XXX	XXX	XXX
80	Joint Facility Rents—Debit—Running.	XXX	XXX	33-11-00	XXX		XXX	XXX	XXX	XXX
81	Joint Facility Rents—Debt—Switching.	XXX	XXX	33-12-00	XXX		XXX	XXX	XXX	XXX
82	Joint Facility Rents—Debit—Other.	XXX	XXX	33-13-00	XXX		XXX	XXX	XXX	XXX
83	Joint Facility Rents—(Credit)—Running.	XXX	XXX	34-11-00	XXX		XXX	XXX	XXX	XXX
84	Joint Facility Rents—(Credit)—Switching.	XXX	XXX	34-12-00	XXX		XXX	XXX	XXX	XXX
85	Joint Facility Rents—(Credit)—Other.	XXX	XXX	34-13-00	XXX		XXX	XXX	XXX	XXX
86	Other Rents—Debit—Running.	XXX	XXX	35-11-00	XXX		XXX	XXX	XXX	XXX
87	Other Rents—Debit—Switching.	XXX	XXX	35-12-00	XXX		XXX	XXX	XXX	XXX
88	Other Rents—Debit—Other.	XXX	XXX	35-13-00	XXX		XXX	XXX	XXX	XXX
89	Other Rents—(Credit)—Running.	XXX	XXX	36-11-00	XXX		XXX	XXX	XXX	XXX
90	Other Rents—(Credit)—Switching.	XXX	XXX	36-12-00	XXX		XXX	XXX	XXX	XXX
91	Other Rents—(Credit)—Other.	XXX	XXX	36-13-00	XXX		XXX	XXX	XXX	XXX
92	Total—Ls. 72 thru 91.							XXX		Direct
93	*TOTAL—Way & Structures*—Sum of Ls. 16, 23, 27, 32, 37, 38, 44, 56, 63, 64, 71, and 92.						XXX	XXX		XXX
	Equipment									
	Locomotives									
94	Lease Rentals—Debit.	XXX	XXX	31-21-00	XXX		XXX	XXX	XXX	XXX
95	Other Rents—Debit	XXX	XXX	35-21-00	XXX		XXX	XXX	XXX	XXX
96	Totals—Ls. 94 and 95.									Locomotive Unit Miles
97	Repair & Maintenance.	11-21-41	21-21-41	39/41-21-41	61-21-41		XXX	XXX	XXX	XXX
98	Repairs Billed to Others—(Credit).	XXX	XXX	40-21-41	XXX		XXX	XXX	XXX	XXX
99	Equipment Damaged..	11-21-48	21-21-48	39/41-21-48	61-21-48		XXX	XXX	XXX	XXX
100	Repairs Billed to Others—(Credit).	XXX	XXX	40-21-48	XXX		XXX	XXX	XXX	XXX
101	Joint Facility Rents—Debit.	XXX	XXX	37-21-00	XXX		XXX	XXX	XXX	XXX
102	Joint Facility Rents—(Credit).	XXX	XXX	34-21-00	XXX		XXX	XXX	XXX	XXX

COST FORM—Continued

Line No.	Account Name	Account Number					Directed Traffic			
		Salaries and Wages	Materials and Supplies	Purchased Services	General	Total Cols. (2)–(5)	Direct	Common Apportioned	Total Cols. (7)+(8)	Suggested Apportionment Factors
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
103	Lease Rents—(Credit).	XXX	XXX	32-21-00	XXX		XXX	XXX	XXX	XXX
104	Other Rents—(Credit).	XXX	XXX	36-21-00	XXX		XXX	XXX	XXX	XXX
105	Total—Ls. 97 thru 104.									Gross Ton-Miles
	Freight Cars									
106	Repair & Maintenance.	11-22-42	21-22-42	39/41-22-42	61-22-42		XXX	XXX	XXX	XXX
107	Repairs Billed to Others—(Credit).	XXX	XXX	40-22-42	XXX		XXX	XXX	XXX	XXX
108	Equipment Damaged	11-22-48	21-22-48	39/41-22-48	61-22-48		XXX	XXX	XXX	XXX
109	Repairs Billed to Others—(Credit).	XXX	XXX	40-22-48	XXX		XXX	XXX	XXX	XXX
110	Lease Rentals—Debit.	XXX	XXX	31-22-00	XXX		XXX	XXX	XXX	XXX
111	Lease Rentals—(Credit).	XXX	XXX	32-22-00	XXX		XXX	XXX	XXX	XXX
112	Joint Facility Rents—Debit.	XXX	XXX	33-22-00	XXX		XXX	XXX	XXX	XXX
113	Joint Facility Rents—(Credit).	XXX	XXX	34-22-00	XXX		XXX	XXX	XXX	XXX
114	Other Rents—Debit	XXX	XXX	35-22-00	XXX		XXX	XXX	XXX	XXX
115	Other Rents—(Credit).	XXX	XXX	36-22-00	XXX		XXX	XXX	XXX	XXX
116	Total—Ls. 106 thru 115.									Freight-Train Car Miles; Cars-loaded & empty
	Other Equipment									
117	Repair & Maint.—Trucks, Trailers, & Containers—Revenue Service.	11-23-43	21-23-43	39/41-23-43	61-23-43		XXX	XXX	XXX	XXX
118	Repairs Billed to Others—(Credit).	XXX	XXX	40-23-43	XXX		XXX	XXX	XXX	XXX
119	Total—Ls. 117 and 118.									Veh.-Miles—Loaded & Empty
120	Floating Equip.—Revenue Service.	11-23-44	21-23-44	39/41-23-44	61-23-44		XXX	XXX	XXX	XXX
121	Repairs Billed to Others—(Credit).	XXX	XXX	40-23-44	XXX		XXX	XXX	XXX	XXX
122	Total—Ls. 120 and 121.									No. of Carloads Handled
123	Administration	11-21-01	21-21-01	41-21-01	61-21-01		XXX	XXX	XXX	XXX
124	Machinery Repair	11-21-40	21-21-40	39/41-21-40	61-20-40		XXX	XXX	XXX	XXX
125	Repairs Billed to Others—(Credit).	XXX	XXX	40-21-40	XXX		XXX	XXX	XXX	XXX
126	Fringe Benefits	XXX	XXX	XXX	12-21-00		XXX	XXX	XXX	XXX

COST FORM—Continued

Line No.	Account Name	Account Number					Directed Traffic			
		Salaries and Wages	Materials and Supplies	Purchased Services	General	Total Cols. (2)-(5)	Direct	Common Apportioned	Total Cols. (7) + (8)	Suggested Apportionment Factors
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
127	Other Casualties & Insurance.	XXX	XXX	XXX	52/53-21-00		XXX	XXX	XXX	XXX
128	Joint Facility—Debit	XXX	XXX	37-21-00	XXX		XXX	XXX	XXX	XXX
129	Joint Facility—(Credit).	XXX	XXX	38-21-00	XXX		XXX	XXX	XXX	XXX
130	Depreciation	XXX	XXX	XXX	62-21-00		XXX	XXX	XXX	XXX
131	Other	11-21-99	21-21-99	41-21-99	61-21-99		XXX	XXX	XXX	XXX
132	Administration	11-22-01	21-22-01	41-22-01	61-22-01		XXX	XXX	XXX	XXX
133	Machinery Repair	11-22-40	21-22-40	39/41-22-40	61-22-40		XXX	XXX	XXX	XXX
134	Repairs Billed to Others—(Credit).	XXX	XXX	40-22-40	XXX		XXX	XXX	XXX	XXX
135	Fringe Benefits	XXX	XXX	XXX	12-22-00		XXX	XXX	XXX	XXX
136	Other—Casualties & Insurance.	XXX	XXX	XXX	52/53-22-00		XXX	XXX	XXX	XXX
137	Joint Facility—Debit	XXX	XXX	37-22-00	XXX		XXX	XXX	XXX	XXX
138	Joint Facility—(Credit).	XXX	XXX	38-22-00	XXX		XXX	XXX	XXX	XXX
139	Depreciation	XXX	XXX	XXX	62-22-00		XXX	XXX	XXX	XXX
140	Other	11-22-99	21-22-99	41-22-99	61-22-99		XXX	XXX	XXX	XXX
141	Administration	11-23-01	21-23-01	41-23-01	61-23-01		XXX	XXX	XXX	XXX
142	Pass. & Other Rev. Equip.	11-23-45	21-23-45	39/41-23-45	61-23-45		XXX	XXX	XXX	XXX
143	Repairs Billed to Others—(Credit).	XXX	XXX	40-23-45	XXX		XXX	XXX	XXX	XXX
144	Repair & Maint.—Machinery.	11-23-40	21-23-40	39/41-23-40	61-23-40		XXX	XXX	XXX	XXX
145	Repairs Billed to Others—(Credit).	XXX	XXX	40-23-40	XXX		XXX	XXX	XXX	XXX
146	Repair & Maint.—Computers & Data Processing Systems.	11-23-46	21-23-46	39/41-23-46	61-23-46		XXX	XXX	XXX	XXX
147	Repairs Billed to Others—(Credit).	XXX	XXX	40-23-46	XXX		XXX	XXX	XXX	XXX
148	Repair & Maint.—Work & Other Non-Rev. Equip.	11-23-47	21-23-47	39/41-23-47	61-23-47		XXX	XXX	XXX	XXX
149	Repairs Billed to Others—(Credit).	XXX	XXX	40-23-47	XXX		XXX	XXX	XXX	XXX
150	Equipment Damaged	11-23-48	21-23-48	39/41-23-48	61-23-48		XXX	XXX	XXX	XXX
151	Repairs Billed to Others—(Credit).	XXX	XXX	40-23-48	XXX		XXX	XXX	XXX	XXX
152	Fringe Benefits	XXX	XXX	XXX	12-23-00		XXX	XXX	XXX	XXX
153	Other—Casualties & Insurance.	XXX	XXX	XXX	52/53-23-00		XXX	XXX	XXX	XXX
154	Joint Facility Rents—Debit.	XXX	XXX	33-23-00	XXX		XXX	XXX	XXX	XXX
155	Joint Facility Rents—(Credits).	XXX	XXX	34-23-00	XXX		XXX	XXX	XXX	XXX
156	Joint Facility—Debit	XXX	XXX	37-23-00	XXX		XXX	XXX	XXX	XXX
157	Joint Facility—(Credit).	XXX	XXX	38-23-00	XXX		XXX	XXX	XXX	XXX
158	Depreciation	XXX	XXX	XXX	62-23-00		XXX	XXX	XXX	XXX
159	Other	11-23-99	21-23-99	41-23-99	61-23-99		XXX	XXX	XXX	XXX
160	Total—Ls. 123 thru 159.									Total Repair Expenses

COST FORM—Continued

Line No.	Account Name	Account Number					Directed Traffic			
		Salaries and Wages	Materials and Supplies	Purchased Services	General	Total Cols. (2)–(5)	Direct	Common Apportioned	Total Cols. (7)+(8)	Suggested Apportionment Factors
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
161	Lease Rentals—Debit.	XXX	XXX	31-23-00	XXX					Assign where Applicable
162	Lease Rentals—(Credit).	XXX	XXX	32-23-00	XXX					Assign where Applicable
163	Other Rents—Debit	XXX	XXX	35-23-00	XXX					Assign where Applicable
164	Other Rents—(Credit).	XXX	XXX	36-23-00	XXX					Assign where Applicable
165	Miscellaneous Rents	XXX	XXX	543	XXX					Assign where Applicable
166	Total Equipment—Sum of Ls. 96, 105, 116, 119, 122, 160, 161–165.						XXX	XXX		XXX
	Transportation									
	Train Operations									
167	Administration	11-31-01	21-31-01	41-31-01	61-31-01		XXX	XXX	XXX	XXX
168	Fringe Benefits	XXX	XXX	XXX	12-31-00		XXX	XXX	XXX	XXX
169	Other	11-31-99	21-31-99	41-31-99	61-31-99		XXX	XXX	XXX	XXX
170	Other Casualties & Insurance.	XXX	XXX	XXX	52/53-31-00		XXX	XXX	XXX	XXX
171	Dispatching Trains	11-31-58	21-31-58	41-31-58	61-31-58		XXX	XXX	XXX	XXX
172	Total—Ls. 167 thru 171.									Train-Miles
	Administrative Support Opns.									
173	Administration	11-35-01	21-35-01	41-35-01	61-35-01		XXX	XXX	XXX	XXX
174	Fringe Benefits	XXX	XXX	XXX	12-35-00		XXX	XXX	XXX	XXX
175	Casualties & Insurance.	XXX	XXX	XXX	52/53-35-00		XXX	XXX	XXX	XXX
176	Other	11-35-99	21-35-99	41-35-99	61-35-99		XXX	XXX	XXX	XXX
177	Employees Performing Clerical & Acctng. Functions.	11-35-76	21-35-76	41-35-76	61-35-76		XXX	XXX	XXX	XXX
178	Communication Systems Oper.	11-35-77	21-35-77	41-35-77	61-35-77		XXX	XXX	XXX	XXX
179	Total—Ls. 173 thru 178.									Revenue Tons
	Yard Operations									
180	Administration	11-32-01	21-32-01	41-32-01	61-32-01		XXX	XXX	XXX	XXX
181	Fringe Benefits	XXX	XXX	XXX	12-32-00		XXX	XXX	XXX	XXX
182	Other Casualties & Insurance.	XXX	XXX	XXX	52/53-32-00		XXX	XXX	XXX	XXX
183	Other	11-32-99	21-32-99	41-32-99	61-32-99		XXX	XXX	XXX	XXX
184	Oper. Switches, Signals, Retarders & Humps.	XXX	21-32-59	41-32-59	61-32-59		XXX	XXX	XXX	XXX
185	Switch Crews	XXX	21-32-64	41-32-64	61-32-64		XXX	XXX	XXX	XXX

Cost Form—Continued

Line No.	Account Name	Account Number					Directed Traffic			
	Account Name (1)	Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols. (2)-(5) (6)	Direct (7)	Common Apportioned (8)	Total Cols. (7)+(8) (9)	Suggested Apportionment Factors (10)
186	Controlling Operations.	XXX	21-32-65	41-32-65	61-32-65		XXX	XXX	XXX	XXX
187	Yard & Terminal Clerical.	XXX	21-32-66	41-32-66	61-32-66		XXX	XXX	XXX	XXX
188	Administration—Special Service.	11-34-01	21-34-01	41-34-01	61-34-01		XXX	XXX	XXX	XXX
189	Fringe Benefits—Special Service.	XXX	XXX	XXX	12-34-00		XXX	XXX	XXX	XXX
190	Other—Special Service.	11-34-99	21-34-99	41-34-99	61-34-99		XXX	XXX	XXX	XXX
191	Casualties & Insurance—Special Service.	XXX	XXX	XXX	52/53-34-00		XXX	XXX	XXX	XXX
192	Total—Ls. 180 thru 191.									Yd. Switching Loco. unit-miles
193	Operating Signals & Interlockers.	11-31-59	21-31-59	41-31-59	61-31-59		XXX	XXX	XXX	XXX
194	Highway Crossing, Protection.	11-31-61	21-31-61	41-31-61	61-31-61		XXX	XXX	XXX	XXX
195	Operating Drawbridges.	11-31-60	21-31-60	41-31-60	61-31-60		XXX	XXX	XXX	XXX
196	Clearing Wrecks	11-31-63	21-31-63	41-31-63	61-31-63		XXX	XXX	XXX	XXX
197	Clearing Wrecks	11-32-63	21-32-63	41-32-63	61-23-63		XXX	XXX	XXX	XXX
198	Frt. Lost or Damaged—Solely Related.	XXX	XXX	XXX	51-31-00		XXX	XXX	XXX	XXX
199	Frt. Lost or Damaged—Solely Related.	XXX	XXX	XXX	51-32-00		XXX	XXX	XXX	XXX
200	Frt. Lost or Damaged—All Other.	XXX	XXX	XXX	51-33-00		XXX	XXX	XXX	XXX
201	Frt. Lost or Damaged—Solely Related.	XXX	XXX	XXX	51-34-00		XXX	XXX	XXX	XXX
202	Loss & Damage, Claims Processing.	11-35-78	21-35-78	41-35-78	61-35-78		XXX	XXX	XXX	XXX
203	Total—Ls. 193 thru 202.									Train-Miles
204	Loading, Unloading & Local Marine.	11-34-74	21-34-74	41-34-74	61-34-74		XXX	XXX	XXX	XXX
205	P&D, Marine Line—Haul & Rail Substitute Service.	11-34-73	21-34-73	41-34-73	61-34-73		XXX	XXX	XXX	XXX
206	Total—Ls. 204 and 205.									Trailers handled—Loaded & Empty
207	Controlling Operations.	11-32-65	XXX	XXX	XXX		XXX	XXX	XXX	XXX
208	Yd. & Terminal Clerical.	11-32-66	XXX	XXX	XXX		XXX	XXX	XXX	XXX
209	Switch Crews	11-32-64	XXX	XXX	XXX		XXX	XXX	XXX	XXX

COST FORM—Continued

Line No.	Account Name	Account Number					Directed Traffic			
	(1)	Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols. (2)–(5) (6)	Direct (7)	Common Apportioned (8)	Total Cols. (7)+(8) (9)	Suggested Apportionment Factors (10)
210	Operating Switches, Signals, Retarders & Humps.	11-32-59	XXX	XXX	XXX		XXX	XXX	XXX	XXX
211	Locomotive Fuel	11-32-67	21-32-67	41-32-67	61-32-67		XXX	XXX	XXX	XXX
212	Electric Power Purchased/Produced for Motive Power.	11-32-68	21-32-68	41-32-68	61-32-68		XXX	XXX	XXX	XXX
213	Servicing Locomotives.	11-32-69	21-32-69	41-32-69	61-32-69		XXX	XXX	XXX	XXX
214	Joint Facility—Debit	XXX	XXX	37-32-00	XXX		XXX	XXX	XXX	XXX
215	Joint Facility—(Credit).	XXX	XXX	38-32-00	XXX		XXX	XXX	XXX	XXX
216	Total—Ls. 207 thru 215.									Yd. Switching, Loco. Unit-Miles
217	Engine Crews	11-31-56	XXX	XXX	XXX		XXX	XXX	XXX	XXX
218	Train Crews	11-31-57	XXX	XXX	XXX		XXX	XXX	XXX	XXX
219	Total—Ls. 217 and 218.									Accts. 11-31-66 & 11-31-57 Direct Assignment*
220	Locomotive Fuel	11-31-67	21-31-67	41-31-67	61-31-67		XXX	XXX	XXX	XXX
221	Electric Power Purchased/Produced for Motive Power.	11-31-68	21-31-68	41-31-68	61-31-68		XXX	XXX	XXX	XXX
222	Servicing Locomotives.	11-31-69	21-31-69	41-31-69	61-31-69		XXX	XXX	XXX	XXX
223	Joint Facility—Debit	XXX	XXX	37-31-00	XXX		XXX	XXX	XXX	XXX
224	Joint Facility—(Credit).	XXX	XXX	38-31-00	XXX		XXX	XXX	XXX	XXX
225	Joint Facility—Debit	XXX	XXX	37-34-00	XXX		XXX	XXX	XXX	XXX
226	Joint Facility—(Credit).	XXX	XXX	38-34-00	XXX		XXX	XXX	XXX	XXX
227	Joint Facility—Debit	XXX	XXX	37-35-00	XXX		XXX	XXX	XXX	XXX
228	Joint Facility—(Credit).	XXX	XXX	38-35-00	XXX		XXX	XXX	XXX	XXX
229	Total—Ls. 220 thru 228.									Loco. unit—miles incl. train switching
230	Engine Crews	XXX	21-31-56	41-31-56	61-31-56		XXX	XXX	XXX	XXX
231	Train Crews	XXX	21-31-57	41-31-57	51-31-57		XXX	XXX	XXX	XXX
232	Train Inspection & Lubrication.	11-31-62	21-31-62	41-31-62	61-31-62		XXX	XXX	XXX	XXX
233	Cleaning Car Interiors.	11-33-70	21-33-70	41-33-70	XXX		XXX	XXX	XXX	XXX
234	Adjusting & Transferring Loads.	11-33-71	21-33-71	41-33-71	XXX		XXX	XXX	XXX	XXX

Cost Form—Continued

Line No.	Account Name	Account Number					Directed Traffic			
		Salaries and Wages	Materials and Supplies	Purchased Services	General	Total Cols. (2)–(5)	Di-rect	Com-mon Appor-tioned	Total Cols. (7)+(8)	Suggested Apportion-ment Factors
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
235	Car Loading Devices & Grain Doors.	11-33-72	21-33-72	41-33-72	XXX		XXX	XXX	XXX	XXX
236	Protective Services	11-34-75	21-34-75	41-34-75	61-34-75		XXX	XXX	XXX	XXX
237	Fringe Benefits	XXX	XXX	XXX	12-33-00		XXX	XXX	XXX	XXX
238	Total—Ls. 230-237									Frt. Train Car-Miles Loaded & Empty incl. Caboose
239	TOTAL TRANSPORTATION—Sum of Ls. 172, 179, 192, 203, 206, 216, 219, 229, & 238.						XXX	XXX		XXX
	General and Administrative.									
240	Officers—General Superintendence.	11-61-01	21-61-01	41-61-01	61-61-01		XXX	XXX	XXX	XXX
241	Acctg., Auditing & Finance.	11-61-86	21-61-86	41-61-86	61-61-86		XXX	XXX	XXX	XXX
242	Management Services & Data Processing.	11-61-87	21-61-87	41-61-87	61-61-87		XXX	XXX	XXX	XXX
243	Industrial Development.	11-61-90	21-61-90	41-61-90	61-61-90		XXX	XXX	XXX	XXX
244	Personnel & Labor Relations.	11-61-91	21-61-91	41-61-91	61-61-91		XXX	XXX	XXX	XXX
245	Legal & Secretarial	11-61-92	21-61-92	41-61-92	61-61-92		XXX	XXX	XXX	XXX
246	Research & Development.	11-61-94	21-61-94	41-61-94	61-61-94		XXX	XXX	XXX	XXX
247	Casualties & Insurance.	XXX	XXX	XXX	52/53-61-00		XXX	XXX	XXX	XXX
248	Fringe Benefits	XXX	XXX	XXX	12-61-00		XXX	XXX	XXX	XXX
249	Other	11-61-99	21-61-99	41-61-99	61-61-99		XXX	XXX	XXX	XXX
250	Joint Facility—Debit	XXX	XXX	37-61-00	XXX		XXX	XXX	XXX	XXX
251	Joint Facility—(Credit).	XXX	XXX	38-61-00	XXX		XXX	XXX	XXX	XXX
252	Write down of uncollectible Accounts.	XXX	XXX	XXX	63-61-00		XXX	XXX	XXX	XXX
253	Total—Ls. 240 thru 252.									Apportion on the basis of total expenses, Ls. 93, 166, & 239
254	Marketing	11-61-88	21-61-88	41-61-88	61-61-88		XXX	XXX	XXX	XXX
255	Sales	11-61-89	21-61-89	41-61-89	61-61-89		XXX	XXX	XXX	XXX
256	Public Relations & Advertising.	11-61-93	21-61-93	41-61-93	61-61-93		XXX	XXX	XXX	XXX
257	Total—Ls. 254 thru 256.									Line 253

COST FORM—Continued

Line No.	Account Name	Account Number					Directed Traffic			
		Salaries and Wages	Materials and Supplies	Purchased Services	General	Total Cols. (2)–(5)	Direct	Common Apportioned	Total Cols. (7)+(8)	Suggested Apportionment Factors
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
258	Total General & Administrative, Ls. 253 and 257.						XXX	XXX		XXX
259	TOTAL EXPENSES—Ls. 93, 166, 239, and 258.						XXX	XXX		XXX
260	Property Taxes	XXX	XXX	XXX	64-61-00					Miles of Road
261	State Income Taxes	XXX	XXX	XXX	556			XXX		Direct Miles of Road
262	Other Taxes Except on Corporate Income or Payrolls.	XXX	XXX	XXX	65-61-00					
263	TOTAL TAXES—Ls. 260, 261, 262.	XXX	XXX	XXX			XXX	XXX		XXX
264	Miscellaneous Income Charges.	XXX	XXX	XXX	551			XXX		Direct
265	TOTAL—Expenses, Rents & Taxes Sum of Ls. 259, 263, and 264.						XXX	XXX		XXX
	Revenues									
266	Freight (Account 101).	XXX	XXX	XXX	XXX		XXX	XXX		Actual
267	All other	XXX	XXX	XXX	XXX		XXX	XXX		Actual
268	Total Revenues—Ls. 266 and 267.	XXX	XXX	XXX	XXX		XXX	XXX		XXX
269	Local/State Subsidies.	XXX	XXX	XXX	XXX		XXX	XXX		Actual
270	TOTAL INCOME—Ls. 268 & 269.	XXX	XXX	XXX	XXX		XXX	XXX		XXX
271	TOTAL EXPENSES OVER INCOME—Ls. 265 less 270.	XXX	XXX	XXX	XXX		XXX	XXX		XXX
	Computation of Reimbursement.									
272	Allowance for profit, L. 268 multiplied by .06[1].	XXX	XXX	XXX	XXX		XXX	XXX		XXX
273	Working Capital[2]	XXX	XXX	XXX	XXX		XXX	XXX		XXX
274	Section 1126.3 Funding Received.	XXX	XXX	XXX	XXX		XXX	XXX		XXX
275	Total deficiency plus working capital minus S. 1126.3 Funding Received—L. 271 plus L. 273 minus L. 274.	XXX	XXX	XXX	XXX		XXX	XXX		XXX
276	Amount borrowed[3]	XXX	XXX	XXX	XXX		XXX	XXX		XXX
277	Interest allowed[4]	XXX	XXX	XXX	XXX		XXX	XXX		XXX

COST FORM—Continued

Line No.	Account Name	Account Number					Directed Traffic			
		Salaries and Wages	Materials and Supplies	Purchased Services	General	Total Cols. (2)–(5)	Direct	Common Apportioned	Total Cols. (7)+(8)	Suggested Apportionment Factors
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
278	Total expenses plus profit plus interest—Ls. 265, 272 and 277.	XXX	XXX	XXX	XXX		XXX	XXX		XXX
279	Reimbursement including an allowance for profit less S. 1126.3 funding received—L. 278 minus L. 270 minus L. 274[5].	XXX	XXX	XXX	XXX		XXX	XXX		XXX

[*] Assign engine and train crew expenses direct to carrier's own traffic and directed traffic. Apportion common expenses on the basis of direct assignments to Accounts 11-31-56 and 11-31-57.

[1] Profit is based on 6% of total revenues (line 268). A profit from actual operations above 6% of total revenues may be retained by the directed carrier and no amount for profit will be paid by the Federal Government. Should a profit of less than 6% be earned, the difference between 6% and that % will be paid.

[2] Total expenses in line 265 divided by the total days of the directed operation. Multiply these expenses by a factor of 15 (days) to represent the lag between cash receipts and cash payments.

[3] The amount borrowed should not exceed the permissible limits established in the Ex Parte No. 293 (Sub No. 3) report, unless specifically approved by the Commission.

[4] Apply the average prime rate (per annum) in effect at New York City to line 275, or the prime rate (per annum) in effect at New York City on the date of the loan agreement to line 276, whichever is greater. However, the interest allowed on amounts actually borrowed shall not exceed the amount of interest charged on the loan, if less than the applicable prime rate.

[5] If amount on Line 279 is less than zero, any amount up to the funded amount will be due and payable to the Commission within 30 days. If not paid within the 30-day period the amount due will begin to accrue interest at the average prime rate (per annum) in effect at New York City.

NOTE: If directed service is passenger service, use passenger account numbers anywhere applicable. For accounts 11-25-45, 21-45-45, 39/40/41-25-46, 61-25-45, 11-25-48, 21-25-48, 39/40/41-25-48, 61-25-48, 32-25-00, 31-25-00, and 35-25-00, include in Maintenance of Equipment total and apportion common expenses on the basis of Passenger Train Car-Miles. For accounts 11-41-01, 21-41-01, 41-41-01, 61-41-01, 11-41-57, 21-41-57, 41-41-57, 61-41-57, 11-45-76, 21-45-76, 41-45-76, 61-45-76, 11-41-99, 21-41-99, 41-41-99, and 61-41-99, include in Transportation total and apportion common expenses on the basis of Passenger Train Car-Mile. Include account 102 and all other passenger related revenues with total revenues.

ATTENTION

Knowing and willful misstatements or omissions of material facts constitute federal criminal violations punishable by up to five years imprisonment and fines of up to $10,000 for each offense. (See 18 U.S.C. 1001, 1003, 287.)

Each person by whom this document is signed certifies that the representations appearing herein and in the appendices attached hereto (including any accompanying schedules and statements) are, to the best of his knowlege and belief, true, correct, and complete, based upon all the information required to be included therein, of which he has any knowledge.

Dated this —— day of ————, 19——

————————————
(Signature of Accounting Officer)

By————————————

————————————
(Title)

§ 1156.3 Optional Cash Funding Procedures.

(a) The directed carrier may elect to obtain cash funding from the Commission following the procedure set forth below. The funding procedure is separated into three phases. The first is designed to meet the directed carrier's immediate requirements to institute service. The second is an interim accounting and adjustment under which any serious cash flow problems will be remedied. The third phase is the final accounting after completion of the service and computation of the total account reimbursable.

All reports filed should refer to the appropriate ICC account numbers. The records of the directed carrier relating to the directed service will be subject to continuing audit by the Commission.

(b) *Initial Funding.* (1) The initial funding is intended to cover the immediate deficit to be incurred through cash expenditures that must be made before compensating revenues can be generated. Permissible costs which might require lead funding include:

(i) Payroll costs necessary for assignment of crews;

(ii) Immediate maintenance of way or line repairs necessary to make a line operational or in compliance with safety standards;

(iii) Fuel and supplies;

(iv) Immediate rental or maintenance costs for equipment to be used (other than rental payments to the defaulting carrier);

(v) That portion of overhead allocable to developing the initial operation plan; and

(vi) Any other immediate cash requirements.

(2) To enable the Commission to determine initial cash requirements, the directed carrier is required to submit the following items.

(i) A brief description of its initial operating plan for the directed service, outlining the frequency and schedule of service planned, the personnel and equipment to be utilized, the crew change and interchange points to be observed, any immediate maintenance and repair work required, and its fuel and supply needs.

(ii) A statement of its immediate cash requirements, with any supporting evidence deemed necessary.

(iii) A statement of the forecasted costs and revenues attributable to the directed service for the 60 day period with appropriate explanatory notes.

These are to be submitted as soon as possible, but not later than 15 days after the issuance of the directed service order. After the Commission has determined the initial cash requirements (and within 30 days after the directed carrier's submission), it will certify to the Treasury Department that this amount is immediately payable.

(c) *Interim Accounting.* The interim accounting procedure consists of a report filed by the directed carrier at the end of each 30 day period following institution of the directed service. In addition, the carrier may file a report whenever it is experiencing severe cash flow difficulties and desires additional interim funding. The interim reports must contain:

(1) A statement of any revisions to the operating plan.

(2) An unaudited cash flow statement for the period since its last report, and an explanation of any requests for additional cash.

(3) An unaudited statement of costs and revenues attributable to the directed service since its institution, and a statement of the forecasted costs and revenues for the remainder of the directed service period.

Within 30 days after receipt of an interim financing request with supporting data, the Commission will certify to the Treasury Department the amount to be paid the directed carrier.

(d) *Final Accounting.* (1) The final accounting report, to be filed within 180 days after completion of the directed service, should conform to the requirements of § 1156.2 of this part. Any monies paid under the optional cash funding procedures must be deducted from the amount to be reimbursed (line 279). Also, the base for computation of allowable interest (line 277) must be reduced by the amount paid.

(2) After auditing the claim, the Commission will determine the allowable reimbursement. It will certify to the Treasury Department that the directed carrier be paid that amount by which the allowable reimbursement exceeds the amount paid. Should the amount paid exceed the allowable reimbursement, the difference will be due and payable by the directed carrier to the Commission within 30 days. It not paid within the 30-day period, the amount due will then begin to accrue interest at the prevailing prime rate.

PART 1157—STANDARDS FOR DETERMINING COMMUTER RAIL SERVICE CONTINUATION SUBSIDIES

Subpart A—Determination of Commuter Rail Service Continuation Subsidies

Sec.
1157.1 Definitions.
1157.2 Purpose and scope.
1157.3 Subsidy agreement.
1157.4 Interpretations of the Standards.
1157.5 Access to records, audit and inspection.
1157.6 Revenues attributable to commuter rail service.
1157.7 Avoidable costs of providing service.
1157.8 Valuation of rail properties.
1157.9 Reasonable return on the value of the properties.
1157.10 Additional rail passenger service.

APPENDIX I—SUBSIDY ESTIMATE
APPENDIX II—FINANCIAL STATUS REPORT
APPENDIX III—SPEED FACTORED GROSS TONS FORMULA (SFGT)

Subpart B—Notice of Discontinuance of Commuter Service by Amtrak Commuter Services Corporation

1157.20 Purpose.
1157.21 Content and form of the notice.
1157.22 Service and posting.

AUTHORITY: 49 U.S.C. 10321 and 10362; 5 U.S.C. 559, unless otherwise noted.

SOURCE: 44 FR 16411, Mar. 19, 1979, unless otherwise noted. Redesignated at 47 FR 49582, Nov. 1, 1982.

Subpart A—Determination of Commuter Rail Service Continuation Subsidies

§ 1157.1 Definitions.

Unless otherwise required by the context, the following definitions apply in this part:

Account means an account in the ICC's Uniform System of Accounts for Railroad Companies (49 CFR Part 1201).

3R Act means the Regional Rail Reorganization Act of 1973 (Pub. L. 93-236 (45 U.S.C. 701 *et. seq.*)) as amended by the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210 (90 Stat. 31 *et. seq.*)) and the Local Rail Service Assistance Act of 1978 (Pub. L. 95-607 (92 Stat. 3059 *et. seq.*)).

Actual means charges for rail facilities, properties and services which are directly identified with commuter service excluding those costs which are apportioned under § 1157.7(f). Such charges shall be included in the proper account whether incurred by the subsidizer or the railroad.

Amtrak means the National Railroad Passenger Corporation.

Base costs means all costs that are specifically related to a rail property and/or facility, except those costs which could be avoided if the minority user(s) service(s) were not present.

Base period means a minimum of three months and a maximum of twelve months for which the latest traffic, revenue and cost data are available.

Common Costs means charges for rail facilities, properties and services in the designated area which are not solely for the benefit of a particular user. Such charges shall be included in the proper account.

Commuter service means the specific service for which the subsidizer has offered or agreed to make continuation payments.

Conrail means the Consolidated Rail Corporation.

Designated area means a portion of the rail facilities such as track segments, buildings and yards, for which costs are collected and apportioned between commuter and other services. A designated area may extend beyond or outside the commuter service area.

Dominant user means the person, railroad, State, or local or regional transportation authority who is the owner of a rail property and/or facility.

Facilities Utilization Plan means a document identifying and itemizing the road and equipment properties used in providing commuter passenger service.

Form R-1 means the railroad's annual report filed with the ICC in accordance with the requirements of section 20 of the Interstate Commerce Act.

ICC means Interstate Commerce Commission.

Manpower Utilization Plan means a document identifying the labor forces used in providing commuter passenger service.

Minority user means a user other than the dominant user of a rail property and/or facility on an incremental (use) basis.

4R Act means the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210 (90 Stat. 31 *et. seq.*).

Railroad means a common carrier by railroad, as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3)), including Conrail and Amtrak.

RSPO means the Rail Services Planning Office of the ICC.

Secretary means the Secretary of Transportation or his designated representative.

Standards means 49 CFR part 1157 Standards for Determining Commuter Rail Service Continuation Subsidies.

Subsidizer means a State or a local or regional transportation authority which offers to make or makes a payment to continue commuter rail service pursuant to sections 304(c) and 304(e) of the 3R Act as amended.

Subsidy period means the term for which a subsidy agreement has been negotiated and is in operation.

XX means that where this notation precedes the last four digits of an account number (e.g. XX-16-02), all accounts with identical last four digits (e.g. 11-16-02, 21-16-02, 41-16-02 and 61-16-02) are to be included.

[44 FR 16411, Mar. 19, 1979, as amended at 45 FR 45, Jan. 2, 1980. Redesignated at 47 FR 49582, Nov. 1, 1982]

§ 1157.2 Purpose and scope.

(a) Section 304(e)(1), as amended, of the 3R Act requires Conrail (or a profitable railroad) to provide commuter rail service for a period of 180 days commencing April 1, 1976, on all rail properties over which a railroad in reorganization in the Northeast and Midwest Region, or a person leased, operated, or controlled by such a railroad, was providing service as of that date regardless of whether or not the properties were designated in the Final System Plan of the United States Railway Association as rail properties over which rail service is required to be operated.

(b) Section 304(c)(2)(A) and section 304(e)(4) of the 3R Act, as amended, provide that no commuter rail service may be discontinued, and no rail properties may be abandoned, if a subsidizer offers financial assistance in the form of a rail service continuation payment which is designed to cover the difference between the avoidable costs of providing commuter rail service on the rail properties and the revenues attributable to such properties, together with a reasonable return on the value of the properties.

(c) Section 205(d)(6) of the 3R Act, as amended, authorizes RSPO to determine and publish Standards for defining (1) the "revenue attributable to the rail properties", (2) the "avoidable cost of providing service", and (3) a "reasonable return on value", as those phrases are used in section 304 of the 3R Act, as amended.

(d) Section 205(d)(5) of the 3R Act, as amended, directs RSPO to determine and publish Standards for the computation of subsidies for commuter rail service (except passenger service compensation disputes subject to the jurisdiction of the ICC) which are consistent with the compensation principles described in the Final System Plan and which avoid cross subsidization among commuter, intercity, and freight rail services.

(e) These regulations set forth a method for establishing an estimated subsidy payment, which will enable a prospective subsidizer to formulate a subsidy offer within the context of section 304 of the 3R Act, as amended, and provide a basis for subsidy payment pending the negotiation of a subsidy agreement. When an agreement is concluded, subsequent payments shall be based on the negotiated subsidy. The final payment shall be adjusted to reflect the actual revenues derived, avoidable costs incurred and value of the properties used in the subsidy period.

(f) Section 304(e)(4)(C) of the 3R Act, as amended, provides that the Commuter Standards published as 49 CFR part 1157, Standards For Determining Commuter Rail Service Continuation Subsidies under section 205(d)(5)(A) and (6) of the 3R Act, as amended, shall apply to rail passenger service provided under an agreement or lease pursuant to sections 303(b)(2) or 304(c)(2)(B) of the 3R Act, as amended, when an offer is made for the continuation of rail passenger service beyond the period required by such agreement or lease.

§ 1157.3 Subsidy agreement.

(a) *Notice of Intention.* A prospective subsidizer shall notify the railroad of its intention to offer financial assistance for the continuation of commuter service no later than 40 days before the offer is to be tendered. The Notice shall specify:

(1) All modifications in the fares to be charged and in the existing level of service, including changes in routes, schedules, train seating capacity, performance standards, equipment units, and such other dimensions of service as the subsidizer may specify;

(2) The length of the subsidy period; and

(3) The name and address of the prospective subsidizer.

A copy of the Notice shall be served concurrently on RSPO and the Secretary.

(b) *Subsidy Estimate.* The railroad shall compute a subsidy estimate predicated on the information contained in the Notice and the revenues attributable, avoidable costs of providing service, and reasonable return on value for the based period in accordance with the methodology prescribed in §§ 1157.6 through 1157.9 and in the format specified in appendix I to this part. The estimate shall be adjusted as necessary to allow for any actual or projected variations in service, e.g. seasonal fluctuations in traffic or extraordinary events affecting service levels. The bases of any adjustments shall be stated with particularity. The railroad's estimate and the general terms it proposes for an agreement shall be served on the prospective subsidizer (with copies to RSPO and the Secretary) as soon as possible but not later than 30 days after the Notice is received.

(c) *Offer of Financial Assistance.* The prospective subsidizer must formulate an offer of subsidy predicated on the railroad's estimate, but may propose modifications which are consistent with these Standards. Subsidy offers must be served on the railroad (with copies to RSPO and the Secretary) not less than 60 days before the end of the subsidy period. The offer shall contain:

(1) A subsidy estimate in the form prescribed in Appendix I to this part;

(2) A resolution, authorization or other evidence that the prospective subsidizer has, or within a reasonable time will have, the authority to execute and fulfill an agreement to subsidize the service;

(3) Information demonstrating that the prospective subsidizer has, or within a reasonable time will have, the financial resources to subsidize the service and otherwise fulfill its contractual obligations; and

(4) A subsidy payment for the first month of service.

(d) *Negotiations*—(1) *General.* The railroad and the prospective subsidizer shall negotiate an initial subsidy agreement as soon as possible. The parties may agree in arm's-length negotiations to provisions which modify the Standards, subject to review of such modifications by RSPO. RSPO would not expect to disapprove variations from the Standards which are the product of arm's-length negotiations and which are shown to be reasonable in the light of the pertinent facts and circumstances. When an agreement has been reached, a copy shall be filed promptly with RSPO for its review.

(2) *Significant Use.* Unless the parties agree otherwise, the subsidizer shall be deemed a significant user of the rail properties in the areas designated on the facilities utilization plan, and shall be assigned the directly identifiable and common costs, including base costs as applicable, of providing the commuter passenger service.

(3) *Insignificant Use.* A minority user, who is proposing incidential use of rail properties in the designated area, may be assigned the directly identifiable costs incurred in providing the service, plus an allowance for overhead as negotiated by the parties. If the parties are unable to agree on an overhead allowance, the methodology for apportioning common costs specified in § 1157.7 shall apply.

(4) *Mediation.* Upon request of either party, RSPO will mediate disagreements concerning the facilities utilization plan, the manpower utilization plan, the subsidy agreement and the application of these Standards.

(e) *Subsidy Payments.* The subsidizer shall make subsidy payments monthly in advance, based either upon the negotiated estimate, or in the absence of a subsidy agreement, upon the subsidizer's offer of financial assistance. The payment shall be determined by dividing the total subsidy by the number of months in the subsidy period. Interest on overdue subsidy payments shall accrue, at a rate of 100 basis points (1 percentage point) above the prime rate currently quoted at a principal bank in the commuter service area, for such period as they remain unpaid and the railroad has not terminated the service. The final subsidy payment shall be adjusted retroactively within 60 days of the filing of the final Financial Status Report required by paragraph (f) of this section to reflect the actual revenues derived, avoidable costs incurred and value of the properties used in providing rail commuter service during the subsidy period. The railroad shall establish a system to collect the data necessary to make the adjustment. If the subsidizer is entitled to a refund, the railroad shall pay interest on the overpayment, at a rate of 100 basis points (1 percentage point) above the prime rate currently quoted at a principal bank in the commuter service area, accruing from the end of the subsidy period until the refund is made.

(f) *Financial Status Report.* The railroad shall submit to the subsidizer and RSPO a Financial Status Report in the form prescribed in appendix II to this part within 60 days after the end of each three months of the subsidy period. Significant deviations from the subsidy estimate must be explained. Unless the parties otherwise agree, the second-to-last report shall be the basis for negotiating the subsequent subsidy agreement. The final report shall be the basis of the subsidy payment adjustment.

[44 FR 16411, Mar. 19, 1979, as amended at 45 FR 45, Jan. 2, 1980. Redesignated at 47 FR 49582, Nov. 1, 1982]

§ 1157.4 Interpretations of the Standards.

Parties desiring an interpretation of the Standards should file a written petition citing the section involved and setting forth their position and rationale. If the request arises from a dispute with other parties, the petitioner should identify those parties and serve each of them with a copy. Parties desiring to file a reply must do so within 10 days of their receipt of the petition. RSPO will issue an interpretation, unless it concludes that the matter raised requires amendment of the Standards, in which case RSPO will institute a rulemaking proceeding.

§ 1157.5 Access to records, audit and inspection.

(a) The subsidizer, RSPO, Conrail and the Secretary of Transportation shall have reasonable access to the records, accounts, working papers, and other documents and to the properties and equipment of any railroad or subsidizer which provides commuter passenger service or whose properties and equipment are used in providing commuter passenger service for the following purposes:

(1) To verify the accuracy and completeness of the subsidy estimate, the facilities utilization plan, the manpower utilization plan, and the Financial Status Reports;

(2) To audit the actual revenues attributable, costs incurred and service units maintained during the subsidy period;

(3) To inspect the properties and equipment used in providing the commuter passenger service and to measure the performance of the railroad under the offer of financial assistance and the subsidy agreement; or

(b) The properties and records described in paragraph (a) shall be made available for inspection and examination by the subsidizer, RSPO, Conrail or the Secretary of Transportation during regular business hours at a time and place mutually agreeable to the parties. The railroad or the subsidizer shall also reproduce such records, providing the requesting party pays the reasonable cost thereof.

[44 FR 16411, Mar. 19, 1979, as amended at 45 FR 45, Jan. 2, 1980. Redesignated at 47 FR 49582, Nov. 1, 1982]

§ 1157.6 Revenues attributable to commuter rail service.

The revenues attributable to commuter rail service shall be the total of the revenues, rentals and allowances assigned in accordance with this section. Where a third party controls revenues or rents attributable to the commuter service, the railroad shall credit the commuter service with the amounts of such revenues or rents credited to it by the third party, and shall use its best efforts to negotiate equitable apportionments. Revenues attributable to two or more commuter services shall be apportioned between them on the basis of car-miles operated under the respective offers of financial assistance or subsidy agreements. The revenues, rentals and allowances assigned shall be derived from the following accounts.

(a) *Revenue Accounts.* (1) Account 101—Freight (Mail portion) *Account 102—Passenger; Account 103—Passenger Related; Account 104—Switching; Account 105—Water Transfers.* The revenues assigned to these accounts shall be the actual revenues attributable to commuter service that are directly identified with the operation of commuter trains, excluding rail service continuation payments.

(2) *Account 110—Incidental.* The revenues assigned to this account earned on commuter trains shall be credited directly to the commuter service. The commuter service portion of revenues generated at fixed facilities used in common with other services shall be determined from the relative passenger on-off counts (including pass riders) at those facilities. Special studies of on-off counts may be substituted for continuous records of such counts where desired. Any amounts included in this account from the sale of electric current or power shall be assigned to commuter service in accordance with § 1157.7(f)(3)(v) if related to train operations and (§ 1157.7(f)(3)(ix)) if related to yard operations.

(3) *Account 121—Joint facility—Cr.; Account 122—Joint facility—Dr.* To the extent that the terms of joint facility agreements yield apportionments of revenues to commuter services, the amounts so yielded shall be credited or debited directly to the commuter service. If the terms of the agreements do not yield such apportionments, passenger on-off counts (including pass riders) shall be the basis of apportionment at joint facilities where passengers are boarded or discharged; and at other facilities counts of cars handled as developed from special studies or continuous records shall be the basis of apportionment.

(b) *Rentals—Account 510—Miscellaneous rent income.* The rentals assigned to this account which are attributable to commuter service shall be the actual amount derived from the rental of commuter service equipment or other property including property owned by the subsidizer, Conrail, Amtrak or other parties.

(c) *Pass Rider Allowance.* Attributable revenues of the commuter service shall be credited with an allowance for passengers using passes or reduced fare tickets issued by the railroad (or predecessor companies). The parties may continue existing practices for crediting such allowances. In the absence of an agreement, the amount of such credit shall be determined on the basis of currently applicable fares charged revenue commuter passengers.

(d) *Conversion chart for Revenue Accounts.*

Revenue account title	Previous account number	Present account number
Freight (Mail portion)	101	101
Passenger	102	102
Passenger Related	103, 104, 105, 106, 131.	103
Switching	110	104
Water Transfers	113	105
Incidental	132, 133, 138, 141, 142, 143.	110
Joint Facility-Cr	151	121
Joint Facility-Dr	152	122
Miscellaneous Rent Income	510	510

§ 1157.7 Avoidable costs of providing service.

(a) *Assignment of costs.* To the maximum extent practicable, the directly identifiable and common costs for each designated area shall be developed from a facilities utilization plan and a manpower utilization plan. The base costs shall be assigned to the dominant user. The facilities and manpower utilization plans, developed on the basis of dominant and minority user(s), are to be completed with the assistance of available and appropriate cost and accounting records such as time sheets, material requisitions, charge cards, vouchers, and the like. [All accounts shall be separated between labor and material (non-labor) charges.] Otherwise, costs may be assigned to the minority service in a manner agreed to by the parties. The parties may rely on historical data; conduct special studies; develop their own apportionment formulae based on use; or agree on a combination of these methods. Upon request of either party, RSPO will mediate disputes concerning the proper methodology for assigning costs. Any costs which are not assigned under the foregoing procedure shall be assigned in accordance with the methodology prescribed in paragraph (e) and (f) of this section, subject to the condition that either party may request a special study. The requesting party will be responsible for designing the study and obtaining the other party's approval of the design. The results of the study will be binding on both parties unless they mutually agree to disregard the results. Where commuter service is not the dominant user the avoidable costs common to two or more commuter services shall be apportioned between them on the basis of car-miles operated under the respective offers of financial assistance or subsidy agreements. In assigning costs to the minority user(s) it is understood that the amounts charged to a particular function shall include both the directly attributable expenses and the minority user's portion of the common expenses for that function. Also, the assignment of common costs associated with some supervision of overhead functions that relate to both dominant user and minority user(s) activities requires the inclusion of the applicable dominant user account in the apportionment base.

(b) *Facilities Utilization Plan.* The parties shall develop a facilities utilization plan which shall identify the dominant and minority user(s). The facilities utilization plan shall identify and itemize the road and equipment properties used by the minority user(s) and assign to each property or group of properties the agreed percentage of use devoted to the minority user(s). In the event that there is only one service being operated, the facilities utilization plan shall identify only those properties used and useful to that service. The plan shall identify those road properties which are avoidable upon discontinuance of the minority user(s) service for the purposes of determining road depreciation, retirement and dismantling charges [§ 1157.7(e) through (f)] and value of road properties [§ 1157.8(b) and (c)]. The roadway properties and facilities should be divided into areas or segments consisting of stretches of property where operations or use remain fairly constant and pinpointing those places where the operations or use change (e.g., number of tracks change, diverging or entering branch lines and other similar changes). Properties and equipment normally covered in a facilities utilization plan include: Trackage; signal system; electrification system; interlocking plants; bridges and drawbridges; stations and platforms; rail-highway crossings; yards; power plants; shops; enginehouses and servicing facilities; storehouses; land; rolling stock; and other facilities or equipment. Source data normally include equipment rosters, track diagrams or maps of the properties in the above categories, and usage measures for each class of facility and equipment by specific facility or segment (e.g., track density charts, trains sheets, timetables, blocking records, yarding programs, station workloads, etc.) to determine the percentage of use of facilities or equipment in providing the minority service(s).

(c) *Manpower Utilization Plan.* The parties shall also develop a manpower utilization plan separated between designated areas in which the commuter authority is the dominant user and designated areas in which the commuter authority is the minority user. Where the commuter service is the dominant user, the plan shall identify the labor forces used in providing both the commuter service and any minority service(s). The plan shall list all persons employed according to job title, work location, account and percentage of time devoted to dominant and minority service(s) duties. Where the commuter service is the minority user the plan shall identify the labor forces used in providing the commuter service. The plan shall list the persons employed according to the job title, work location, account and percentage of time devoted to commuter service duties.

(d) *Special studies.* All special studies shall be conducted jointly by the railroad and the subsidizer. The length and frequency of the studies and the standardized measurement procedures utilized in the studies shall be negotiated by the parties. In the event of impasse, either party may submit the dispute to RSPO for resolution and its decision shall be final. The cost of studies which are prescribed by these Standards or which the parties voluntarily agree to perform shall be attributed to the commuter service. The cost of studies performed at the request of only one party shall be borne exclusively by that party and shall not be attributed to the commuter service.

(e) *Conversion Chart and Assignment Basis of Expense Accounts to Commuter Service.*

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
(1) MAINTENANCE OF WAY AND STRUCTURES			
ADMINISTRATION			
Track	201	XX-16-02 XX-19-02	Various accounts (1157.7(f)(1)(ix)).
Bridges and buildings	201	XX-16-03 XX-19-03	Various accounts (1157.7(f)(1)(x)).
Signals	201	XX-16-04 XX-19-04	Various accounts (1157.7(f)(1)(xi)).
Communications	201	XX-16-05 XX-19-05	Various accounts (1157.7(f)(1)(xiv)).
Other	201	XX-16-06 XX-19-06	Various accounts (1157.7)(f)(1)(xii)).
REPAIR AND MAINTENANCE			
Running			
Roadway	202	XX-14-10 XX-17-10	Speed factored gross tons SFGT (1157.7(f)(1)(ii)).
Tunnels and subways	206	XX-14-11- PXX-17-11	Do.
Bridges and culverts	208, 210	XX-14-12 XX-17-12	Do.
Ties	212	21-14-13 21-17-13	Do.
Rails	214	21-14-14 21-17-14	Do.
Other track material	216	21-14-15 21-17-15	Do.
Ballast	218	21-14-16 21-17-16	Do.
Track laying and surfacing	220	XX-14-17 XX-17-17	Do.
Road property damaged	202-220	XX-14-48 XX-17-48	Do.
Highway grade crossings	273	XX-14-22 XX-17-22	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
Switching			
Roadway	202	XX-15-10 XX-18-10	Cars dispatched (1157.7)(f)(1)(ii)).
Tunnels and subways	206	XX-15-11 XX-18-11	Do.
Bridges and culverts	208, 210	XX-15-12 XX-18-12	Do.
Ties	212	21-15-13 21-18-13	Do.
Rails	214	21-15-14 21-18-14	Do.
Other track material	216	21-15-15 21-18-15	Do.
Ballast	218	21-15-16 21-18-16	Do.
Track laying and surfacing	220	XX-15-17 XX-18-17	Do.
Road property damaged	202-220	XX-15-48 XX-18-48	Do.
Highway grade crossings	273	XX-15-22 XX-18-22	Do.
Station and office buildings	227	XX-16-23 XX-19-23	Square feet and passenger—on-off count (1157.7(f)(1)(iii)).
Road property damaged—other	221-265	XX-16-48 XX-19-48	Repair and maintenance—running plus switching (1157.7(f)(1)(viii)).
Signals and interlockers	249		
Running		XX-14-19 XX-17-19	Train movements (1157.7(f)(1)(iv)).
Switching		XX-15-19 XX-18-19	Actual.
Communications system	247	XX-16-20 XX-19-20	Various accounts (1157.7(f)(1)(xiii)).
Power systems	253, 257	XX-16-21 XX-19-21	Kilowatt hours (1157.7(f)(1)(v)).
Shop buildings	235, 253, 257		
Locomotives		XX-16-24 XX-19-24	Labor charges (1157.7(f)(1)(vi)).
Other equipment		XX-16-26 XX-19-26	Do.
Locomotives servicing facilities	231, 233	XX-16-27 XX-19-27	Unit miles, fuel dispensed (1157.7(f)(1)(vii)).
Miscellaneous buildings and structures	221, 229 239, 265	XX-16-28 XX-19-28	Repair and maintenance—running plus switching (1157.7(f)(1)(viii)).
Roadway machines	269	XX-16-36 XX-19-36	Do.
Small tools and supplies	271	XX-16-37 XX-19-37	Do.
Snow removal	272	XX-16-38 XX-19-38	Do.
Dismantling retired road property	270, 306	Actual. See footnote 2.	
Running		XX-14-39 XX-17-39	See footnote 2.
Switching		XX-15-39 XX-18-39	Actual. See footnote 2. See footnote 2.
Other		XX-16-39 XX-19-39	Actual. See footnote 2.
Fringe benefits	277, 457		Various accounts (1157.7(f)(1)(xvi)).
Running	12-14-00 12-17-00		
Switching		12-15-00 12-18-00	Do.
Other		12-16-00 12-19-00	Do.
Casualties and insurance	274, 275		
Running		52-14-00 52-17-00 53-14-00 53-17-00	Various accounts (1157.7(f)(1)(xv)).

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
Switching		52-15-00 52-18-00 53-15-00 53-18-00	Do.
Other		52-16-00 52-19-00 53-16-00 53-19-00	Do.
Lease rentals—Dr	542		
Running		31-14-00 31-17-00	Actual.
Switching		31-15-00 31-18-00	Do.
Other		31-16-00 31-19-00	Do.
Lease rentals—Cr	509		
Running		32-14-00 32-17-00	Do.
Switching		32-15-00 32-18-00	Do.
Other		32-16-00 32-19-00	Do.
Joint facility rents—Dr	541		
Running		33-14-00 33-17-00	Agreement or passenger on-off count (1157.6(a)(3))
Switching		33-15-00 33-18-00	Do.
Other		33-16-00 33-19-00	Do.
Joint facility rents—Cr	508		
Running		34-14-00 34-17-00	Do.
Switching		34-15-00 34-18-00	Do
Other		34-16-00 34-19-00	Do.
Other rents—Dr	543		
Running		35-14-00 35-17-00	Actual.
Switching		35-15-00 35-18-00	Actual.
Other		35-16-00 35-19-00	Actual.
Other rents—Cr	510		
Running		36-14-00 36-17-00	Actual.
Switching		36-15-00 36-18-00	Do.
Other		36-16-00 36-19-00	Do.
Depreciation	266		
Running		62-14-00 62-17-00	Actual—restricted to properties identified in section (1157.8(b)). See footnote 2
Switching		62-15-00 62-18-00	Do.
Other	305	62-16-00 62-19-00	Do. See footnote 3. See footnote 3.
Joint facility—Dr	278		
Running		37-14-00 37-17-00	Agreement or passenger on-off count (1157.6(a)(3)).
Switching		37-15-00 37-18-00	Do.
Other		37-16-00 37-19-00	Do.
Joint facility—Cr	279		
Running		38-14-00 38-17-00	Do.
Switching		38-15-00 38-18-00	Do.
Other		38-16-00 38-19-00	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
Other	267, 274, 281, 282		
Running		XX-14-99 XX-17-99	Various accounts (1157.7(f)(1)(xv)) (any amounts in this category which were charged to previous account No. 267 shall be assigned on an actual basis). See footnote 2.
Switching		XX-15-99 XX-18-99	Do. Do.
Other		XX-16-99 XX-19-99	Do. Do.
(2) EQUIPMENT LOCOMOTIVES			
Administration	301	XX-24-01 XX-26-01	Various accounts (1157.7(f)(2)(ii)).
Repair and maintenance	311	XX-24-41 XX-26-41	Special study and actual (1157.7(f)(2)(i)).
Machinery repair	302	XX-24-40 XX-26-40	Various accounts (1157.7(f)(2)(ii)).
Equipment damaged	311	XX-24-48 XX-26-48	Special study and actual (1157.7(f)(2)(i)).
Dismantling retired property	306, 329	XX-24-39 XX-26-39	Actual. See footnote 3.
Fringe benefits	335, 457	12-24-00 12-26-00	Various accounts (1157.7(f)(2)(iii)).
Other casualties and insurance	332, 333	52-24-00 52-26-00 53-24-00 53-26-00	Various accounts (1157.7(f)(2)(ii)). Do.
Lease rentals—Dr	537	31-24-00 31-26-00	Actual.
Lease rentals—Cr	504	32-24-00 32-26-00	Actual.
Other rents—Dr	537	35-24-00 35-26-00	Actual.
Other rents—Cr	504	36-24-00 36-26-00	Actual.
Depreciation	331	62-24-00 62-26-00	Actual.
Joint facility—Dr	336	37-24-00 37-26-00	Agreement or passenger on-off count (1157.6(a)(3)).
Joint facility—Cr	337	38-24-00 38-26-00	Do.
Repairs billed to others—Cr.:			
Machinery	302	40-24-00 40-26-40	Actual.
Locomotives	311	40-24-41 40-26-41	Actual.
Road property and equipment damaged	311, 317, 318, 323, 326, 328	40-24-48 40-26-48	Actual
Other	332, 339	XX-24-99 XX-26-99	Various accounts (1157.7(f)(2)(ii)).
OTHER EQUIPMENT			
Administration	301	XX-25-01 XX-27-01	Various accounts (1157.7(f)(2)(v)).
Passenger and other revenue equipment	317	XX-25-45 XX-27-45	Actual.
Computers and data processing systems	Various accounts	XX-25-46 XX-27-46	Do.
Machinery	302	XX-25-40 XX-27-40	Various accounts (1157.7(f)(2)(v)).
Work and other non-revenue equipment	326, 328	XX-25-47 XX-27-47	Various accounts (1157.7(f)(2)(iv)).
Equipment damaged	317, 318, 323, 326, 328	XX-25-48 XX-27-48	Actual.
Dismantling retired property	306, 329	XX-25-39 XX-27-39	Do.[3] See footnote 3.
Fringe benefits	335, 457	12-25-00 12-27-00	Various accounts (1157.7(f)(2)(vi)).

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
Other casualties and insurance	332, 333	52-25-00 52-27-00	Various accounts (1157.7(f)(2)(v)).
		53-25-00 53-27-00	Do.
Lease rentals—Dr	538	31-25-00 31-27-00	Actual.
Lease rentals—Cr	505	32-25-00 32-27-00	Do.
Joint facility rents—Dr	541	33-25-00 33-27-00	Agreement or passenger on-off count (1157.6(a)(3)).
Joint facility rents—Cr	508	34-25-00 34-27-00	Do.
Other rents—Dr	538	35-25-00 35-27-00	Actual.
Other rents—Cr	505	36-25-00 36-27-00	Do.
Depreciation	331	62-25-00 62-27-00	Do.
Joint facility—Dr	336	37-25-00 37-27-00	Agreement or passenger on-off count (1157.6(a)(3)).
Joint facility—Cr	337	38-25-00 38-27-00	Do.
Repairs billed to others—Cr. passenger and other revenue equipment.	317	40-25-45 40-27-45	Actual.
Computer and data processing equipment	(5)	40-25-46 40-27-46	Do.
Work and other nonrevenue equipment	326, 328	40-25-47 40-27-47	Various accounts (1157.7(f)(2)(iv)).
Road property and equipment damaged	317, 318, 323, 326,328	40-25-48 40-27-48	Actual.
Other	330, 332, 339	XX-25-99 XX-27-99	Actual/various accounts (1157.7(f) (2)(vii)).
(3) TRANSPORTATION TRAIN OPERATIONS			
Administration	371	XX-41-01 XX-51-01	Various accounts (1157.7(f)(3)(xi)).
Engine crews	392. 402	XX-41-56 XX-51-56	Actual, cars dispatched (1157.7(f)(3)(i)).
Train crews	401, 402, 403	XX-41-57 XX-51-57	Do.
Dispatching trains	372	XX-41-58 XX-51-58	Train hours (1157.7(f)(3)(ii)).
Operating signals and interlockers	404	XX-41-59 XX-51-59	Train movements (1157.7(f)(3)(iii)).
Operating drawbridges	406	XX-41-60 XX-51-60	Do.
Highway crossing protection	405	XX-41-61 XX-51-61	Do.
Train inspection and lubrication	311, 402	XX-41-62 XX-51-62	Cars dispatched (1157.7(f)(3)(iv)).
Locomotive fuel	394	XX-41-67 XX-51-67	Actual.
Electric power purchased/produced for motive power.	395, 396, 445	XX-41-68 XX-51-68	Actual-weighted (1157.7(f)(3)(v)).
Servicing locomotives	400	XX-41-69 XX-51-69	Locomotive units (1157.7(f)(3)(vi)).
Freight lost or damaged—solely related	418, 419	51-41-00 51-51-00	Responsibility/reserve account (1157.7(f) (3)(vii)).
Clearing wrecks	415	XX-41-63 XX-51-63	Do.
Fringe benefits	409, 457	12-41-00 12-51-00	Various accounts (1157.7(f)(3)(viii)).
Other casualties and insurance	414, 416, 417, 420	52-41-00 52-51-00 53-41-00 53-51-00	Responsibility/reserve account (1157.7(f) (3)(vii)).
Joint facility—Dr	412	37-41-00 37-51-00	Agreement or passenger on-off count (1157.6(a)(3)).
Joint facility—Cr	413	38-41-00 38-51-00	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
Other	402, 403, 411, 420, 441	XX-41-99 XX-51-99	Actual.
YARD OPERATIONS			
Administration	371	XX-42-01 XX-52-01	Various accounts (1157.7(f)(3)(xi)).
Switch crews	378, 380, 389	XX-42-64 XX-52-64	Unit hours, special study (1157.7(f) (3)(ix)).
Controlling operations	377, 389	XX-42-65 XX-52-65	Do.
Yard and terminal clerical	377, 389	XX-42-66 XX-52-66	Do.
Operating switches, signals, retarders, and humps.	379, 389	XX-42-59 XX-52-59	Do.
Locomotive fuel	382	XX-42-67 XX-52-67	Do.
Electric power purchased/produced for motive power.	383, 384, 445	XX-42-68 XX-52-68	Do.
Servicing locomotives	388	XX-42-69 XX-52-69	Do.
Freight lost or damaged solely related	418, 419	51-42-00 51-52-00	Responsibility/reserve account (1157.7(f) (3)(vii)).
Clearing wrecks	415	XX-42-63 XX-52-63	Do.
Fringe benefits	409, 457	12-42-00 12-52-00	Various accounts (1157.7(f)(3)(viii)).
Other casualties and insurance	414, 416, 420	52-42-00 52-52-00 53-42-00 53-52-00	Responsibility/reserve account (1157.7(f) (3)(vii)).
Joint facility—Dr	390, 412	37-42-00 37-52-00	Agreement or passenger on-off count (1157.6(a)(3)).
Joint facility—Cr	391, 413	38-42-00 38-52-00	Do.
Other	411, 420	XX-42-99 XX-52-99	Actual.
TRAIN AND YARD OPERATIONS COMMON			
Cleaning car interiors	402	XX-43-70 XX-53-70	Do.
Freight lost or damaged—all other	418, 419	51-43-00 51-53-00	Responsibility/reserve account (1157.7(f) (3)(vii))
Fringe benefits	409	12-43-00 12-53-00	Various accounts (1157.7(f)(3)(viii)).
ADMINISTRATIVE SUPPORT OPERATIONS			
Administration	371	XX-45-01 XX-55-01	Various accounts (1157.7(f)(3)(xi)).
Employees performing clerical and accounting functions.	373, 376	XX-45-76 XX-55-76	Various accounts (1157.7(f)(3)(x)).
Communication systems operations	373, 376, 407	XX-45-77 XX-55-77	Administrative accounts (1157.7(f) (3)(xii)).
Loss and damage claims processing	418, 419	XX-45-78 XX-55-78	Responsibility/reserve account (1157.7(f) (3)(vii)).
Fringe benefits	409, 457	12-45-00 12-55-00	Various accounts (1157.7(f)(3)(viii)).
Casualties and insurance	414, 416, 420	52-45-00 52-55-00 53-45-00 53-55-00	Responsibility/reserve account (1157.7(f) (3)(vii)).
Joint facility—Dr	412, 447	37-45-00 37-55-00	Agreement or passenger on-off count (1157.6(a)(3)).
Joint facility—Cr	413, 448	38-45-00 38-55-00	Do.
Other	411, 420	XX-45-99 XX-55-99	Actual.
(4) GENERAL AND ADMINISTRATIVE			
Officers—General Superintendence	351, 451, 452, 453	XX-62-01 XX-63-01	Actual.[1]
Accounting, auditing and finance	451, 452	XX-62-86 XX-63-86	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
Management services and data processing	451, 452	XX-62-87 XX-63-87	Do.
Marketing	352	XX-62-88 XX-63-88	Do.
Sales	352	XX-62-89 XX-63-89	Do.
Personnel and labor relations	451, 452	XX-62-91 XX-63-91	Do.
Legal and secretarial	274, 332, 420, 452, 454	XX-62-92 XX-63-92	Do.
Public relations and advertising	353, 354	XX-62-93 XX-63-93	Do.
Research and Development	(5)	XX-62-94 XX-63-94	Do.
Other	351, 360, 451, 452, 453, 460	XX-62-99 XX-63-99	Do.
Casualties and insurance	357, 455	52-62-00 52-63-00 53-62-00 53-63-00	Do.
Writedown of uncollectible accounts	Various Accounts	63-62-00 63-63-00	Do.
Fringe benefits	359, 456, 457	12-62-00 12-63-00	Various accounts (1157.7(f)(4)).
Property taxes	532	64-62-00 64-63-00	Actual—as determined under section 1157.8(b). See footnote 4.
Other taxes except on corporate income or payrolls.	532	65-62-00 65-63-00	Actual.
Joint facility—Dr	461	37-62-00 37-63-00	Agreement or passenger on-off count 5
Joint facility—Cr	462	38-62-00 38-63-00	Do.

[1] These costs may include the actual expenses incurred in administering the subsidy program. There shall be no apportionment of common costs charged to these accounts.

[2] In those situations where the commuter service is the dominant user, the minority user(s) shall be assigned any charges to these accounts on an actual basis.

[3] The minority user(s) shall pay for units of shop and powerplant machinery which could be disposed of if the minority service were discontinued.

[4] On line segments which are owned by a state, local or regional transportation authority, the minority user(s) shall be charged with those property taxes including in lieu of tax payments which would not be incurred in the absence of the minority service(s).

[5] Various accounts.

(f) *Apportionment Rules For Assigning Common Costs to Commuter Service.* The accounts specified under § 1157.7(e) which have an assignment basis other than "Actual" shall be apportioned according to the rules contained in this section.

(1) *Maintenance of Way and Structures*—(i) *Repair and Maintenance-Switching.* The common costs assigned to these accounts shall be apportioned on the ratio of the commuter service cars dispatched in the designated area to the total cars dispatched in the designated area.

(ii) *Repair and Maintenance—Running.* For a designated area, the common costs assigned to these accounts shall be apportioned on the ratio of the commuter service Speed Factored Gross Tons (SFGT) for the designated area to the total SFGT for all traffic in the designated area. Where the commuter service is the minority user, the commuter service SFGT shall be derived by subtracting the SFGT for freight and/or intercity passenger from the total SFGT for all traffic. Where the commuter service is the dominant user, the commuter service SFGT shall be derived as if the commuter service was the only service; the SFGT shall be calculated in accordance with the formula set forth in appendix III.

(iii) *Station and Office Buildings.* The common costs assigned to these accounts shall be first apportioned on the ratio of total square feet devoted to passenger service to the total square feet used in the facility. The passenger portion shall then be apportioned on the ratio of the commuter service on-off passenger count (including pass riders) in the designated area to the total on-off passenger count (including pass riders) in the designated area.

(iv) *Signals and Interlockers.* The common costs assigned to these accounts shall be apportioned on the ratio of the number of commuter service train movements through these facilities to the total of all train movements through these facilities.

(v) *Power Systems.* The common costs assigned to these accounts shall be apportioned on the ratio of the kilowatt hours consumed by the commuter service to the total kilowatt hours consumed by all services in the designated area.

(vi) *Shop Buildings.* The common costs assigned to these accounts shall be apportioned on the ratio of the labor charges expended servicing commuter service equipment in the designated area to the railroad's total labor charges expended servicing all equipment in the designated area.

(vii) *Locomotive Servicing Facilities.* The common costs assigned to fuel stations shall be kept separate from the common costs assigned to the balance of the locomotive servicing facilities. The common costs assigned to fuel stations shall be apportioned on the ratio of the amount of fuel dispensed in commuter service to the total amount of fuel dispensed for all services using these facilities. The common costs assigned to the balance of the locomotive servicing facilities shall be apportioned on the ratio of the locomotive unit miles (diesel and electric) generated from commuter service using these facilities in the designated area to the railroad's total locomotive unit miles in the designated area (diesel and electric) for all services.

(viii) *Road Property Damaged—Other; Miscellaneous Buildings and Structures.* The common costs assigned to these accounts shall be apportioned on the ratio of the amounts assigned to commuter service to the railroad's total in the designated area for the following accounts:

XX-11-10	XX-14-10	XX-17-10
XX-12-10	XX-15-10	XX-18-10
XX-11-11	XX-14-11	XX-17-11
XX-12-11	XX-15-11	XX-18-11
XX-11-12	XX-14-12	XX-17-12
XX-12-12	XX-15-12	XX-18-12
21-11-13	21-14-13	21-17-13
21-12-13	21-15-13	21-18-13
21-11-14	21-14-14	21-17-14
21-12-14	21-15-14	21-18-14
21-11-15	21-14-15	21-17-15
21-12-15	21-15-15	21-18-15
21-11-16	21-14-16	21-17-16
21-12-16	21-15-16	21-18-16
XX-11-17	XX-14-17	XX-17-17
XX-12-17	XX-15-17	XX-18-17
XX-11-48	XX-14-48	XX-17-48
XX-12-48	XX-15-48	XX-18-48

(ix) *Administration—Track.* The common costs assigned to these accounts shall be apportioned on the ratio of the amounts assigned to commuter service to the railroad's total in the designated area for the following accounts:

XX-11-10	XX-14-10	XX-17-10
XX-12-10	XX-15-10	XX-18-10
XX-11-11	XX-14-11	XX-17-11
XX-12-11	XX-15-11	XX-18-11
21-11-13	21-14-13	21-17-13
21-12-13	21-15-13	21-18-13
21-11-14	21-14-14	21-17-14
21-12-14	21-15-14	21-18-14
21-11-15	21-14-15	21-17-15
21-12-15	21-15-15	21-18-15
21-11-16	21-14-16	21-17-16
21-12-16	21-15-16	21-18-16
XX-11-17	XX-14-17	XX-17-17
XX-12-17	XX-15-17	XX-18-17
XX-11-48	XX-14-48	XX-17-48
XX-12-48	XX-15-48	XX-18-48
XX-11-22	XX-14-22	XX-17-22
XX-12-22	XX-15-22	XX-18-22
XX-13-36	XX-16-36	XX-19-36
XX-13-37	XX-16-37	XX-19-37
XX-13-38	XX-16-38	XX-19-38
XX-11-39	XX-14-39	XX-17-39
XX-12-39	XX-15-39	XX-18-39
XX-13-39	XX-16-39	XX-19-39
XX-13-21	XX-16-21	XX-19-21

(x) *Administration—Bridges and Buildings.* The common cost assigned to these accounts shall be apportioned on the ratio of the amounts assigned to commuter service to the railroad's total in the designated area for the following accounts:

XX-11-12	XX-14-12	XX-17-12
XX-12-12	XX-15-12	XX-18-12
XX-13-23	XX-16-23	XX-19-23
XX-13-24	XX-16-24	XX-19-24
XX-13-25		
XX-13-26	XX-16-26	XX-19-26
XX-13-27	XX-16-27	XX-19-27

XX-13-28	XX-16-28	XX-19-28
XX-13-29		
XX-13-30		
XX-13-31		
XX-13-32		
XX-13-33		
XX-13-35		
XX-13-48	XX-16-48	XX-19-48
XX-11-48	XX-14-48	XX-17-48
XX-12-48	XX-15-48	XX-18-48

(xi) *Administration—Signals.* The common costs assigned to these accounts shall be apportioned on the ratio of amounts in accounts **XX-11-19, XX-12-19, XX-14-19, XX-15-19, XX-17-19, XX-18-19**, assigned to commuter service to the railroad's total in these accounts for the designated area.

(xii) *Administration—Other.* The common costs assigned to these accounts shall be apportioned on the ratio of the amounts in all of the accounts under § 1157.7(e)(1) assigned to commuter service (excluding accounts XX-13-20, XX-16-20, XX-19-20, 12-11-00, 12-12-00, 12-13-00, 12-14-00, 12-15-00, 12-16-00, 12-17-00, 12-18-00, 12-19-00 all rentals accounts, joint facility accounts, fringe benefits accounts, casualties and insurance accounts and depreciation accounts) to the railroad's total for all accounts (freight, passenger, common) under maintenance of way and structures in the designated area.

(xiii) *Communications Systems.* The common costs assigned to these accounts shall be apportioned on the ratio of the amounts assigned to commuter service to the railroad's total in the designated area for the following accounts:

XX-13-02	XX-16-02	XX-19-02
XX-13-03	XX-16-03	XX-19-03
XX-13-04	XX-16-04	XX-19-04
XX-13-06	XX-16-06	XX-19-06
XX-32-65	XX-42-65	XX-52-65
XX-32-66	XX-42-66	XX-52-66
XX-21-01	XX-24-01	XX-26-01
XX-22-01		
XX-23-01	XX-25-01	XX-27-01
XX-31-01	XX-41-01	XX-51-01
XX-32-01	XX-42-01	XX-52-01
XX-33-01	XX-43-01	XX-53-01
XX-34-01		
XX-35-01	XX-45-01	XX-55-01
XX-61-01	XX-62-01	XX-63-01
XX-31-58	XX-41-58	XX-51-58

(xiv) *Administration—Communications.* The common costs assigned to these accounts shall be apportioned on the ratio of amounts in the following accounts: **XX-13-20, XX-16-20, XX-19-20** assigned to commuter service to the railroad's total in these accounts for the designated area.

(xv) *Casualties and Insurance; Other.* The common costs assigned to these accounts shall be apportioned, separated between running, switching and other, on the ratio of the amounts in all of the accounts under § 1157.7(e)(1) assigned to commuter service (excluding accounts 12-11-00, 12-12-00, 12-13-00, 12-14-00, 12-15-00, 12-16-00, 12-17-00, 12-18-00, 12-19-00, all rental accounts, joint facility accounts and depreciation accounts) to the railroad's total in these accounts for the designated area.

(xvi) *Fringe Benefits.* Fringe benefits shall be separated between pensions and Health and Welfare benefits with a further separation between running, switching and other. The costs assigned to these accounts for pensions shall be the actual costs that are directly attributable to commuter service. Health and Welfare benefits shall be assigned to commuter service on the ratio of the commuter service amounts in the respective salary and wage accounts to the railroad's system total for these accounts. Expenses for entertainment facilities for personal use shall only be included in Health and Welfare benefit costs where it can be clearly demonstrated that the cost was commuter service related.

(2) *Equipment—Locomotives*—(i) *Repair and Maintenance; Equipment Damaged.* These accounts shall be separated between yard and other (road) with a further separation between diesel and other (electric). The common costs assigned to these accounts for yard locomotives shall be based on the results of the special study described in § 1157.7(f)(3)(ix). The costs assigned to these accounts for other locomotives (road) shall be the actual costs that are directly attributable to commuter service.

(ii) *Administration; Machinery Repairs; Other Casualties and Insurance; Other.* The common costs assigned to these accounts shall be apportioned on the ratio of the amounts assigned to commuter service to the railroad's total in the designated area for the following accounts:

XX-21-39
XX-21-41
XX-21-48
37-21-00
38-21-00
XX-24-39
XX-24-41
XX-24-48
37-24-00
38-24-00
XX-26-39
XX-26-41
XX-26-48
37-26-00
38-26-00

(iii) *Fringe Benefits—Locomotives.* Fringe benefits shall be separated between pensions and Health and Welfare benefits with a further separation between running, switching and other. The costs assigned to these accounts for pensions shall be the actual costs that are directly attributable to commuter service. Health and Welfare benefits shall be assigned to commuter service on the ratio of the commuter service amounts in the respective salary and wage accounts to the railroad's system total for these accounts. Expenses for entertainment facilities for personal use shall only be included in Health and Welfare benefit costs where it can be clearly demonstrated that the cost was commuter service related.

(iv) *Other Equipment—Work and Other Non-Revenue Equipment.* The common costs assigned to these accounts shall be apportioned on the ratio of the commuter service amounts in the repair and maintenance running and switching accounts, identified in § 1157.7(f)(1)(viii) to the railroad's total for these accounts in the designated area.

(v) *Administration; Machinery; Other Casualties and Insurance.* The common costs assigned to these accounts shall be apportioned on the ratio of the amounts assigned to the railroad's total in the designated area for the following accounts: .

XX-23-43
XX-23-44
XX-23-45
XX-23-46
XX-23-47
XX-23-48
37-23-00
38-23-00
XX-23-39
XX-22-42
XX-25-45
XX-25-46
XX-25-47
XX-25-48
37-25-00
38-25-00
XX-25-39
XX-27-45
XX-27-46
XX-27-47
XX-27-48
37-27-00
38-27-00
XX-27-39

(vi) *Fringe Benefits—Other Equipment.* Fringe benefits shall be separated between pensions and Health and Welfare benefits with a further separation between running, switching and other. The costs assigned to these accounts for pensions shall be the actual costs that are directly attributable to commuter service. Health and Welfare benefits shall be assigned to commuter service on the ratio of the commuter service amounts in the respective salary and wage accounts to the railroad's system total for these accounts. Expenses for entertainment facilities for personal use shall only be included in Health and Welfare benefits costs where it can be clearly demonstrated that the cost was commuter service related.

(vii) *Other.* Equipment retirements shall be assigned to commuter service on an actual basis. The balance of the common costs assigned to these accounts shall be apportioned on the ratio of the amounts assigned to commuter service to the railroad's total in the designated area for the following accounts:

XX-23-43
XX-23-44
XX-23-45
XX-23-46
XX-23-47
XX-23-48
37-23-00
38-23-00
XX-23-39
XX-22-42
XX-25-45
XX-25-46
XX-25-47
XX-25-48
37-25-00
38-25-00
XX-25-39
XX-27-45
XX-27-46
XX-27-47
XX-27-48
37-27-00
38-27-00
XX-27-39

(3) *Transportation*—(i) *Engine Crews; Train Crews.* These accounts shall be separated between salary and wages and train supplies and expenses. The salary and wage portion shall be assigned to commuter service on an actual basis. The common costs assigned to these accounts for train supplies and expenses shall be apportioned on the ratio of commuter cars dispatched in the designated area to the railroad's total cars dispatched in the designated area. Commuter cars shall include passenger cars and motor cars.

(ii) *Dispatching trains.* The common costs assigned to these accounts shall be apportioned on the ratio of the commuter train hours in the designated area to the total train hours in the designated area.

(iii) *Operating Signals and Interlockers; Operating Drawbridges; Highway Crossing Protection.* The common costs assigned to these accounts shall be apportioned on the ratio of the number of commuter service train movements through these facilities to the total of all train movements through these facilities.

(iv) *Train Inspection and Lubrication.* The common costs assigned to these accounts shall be apportioned on the ratio of commuter cars dispatched in the designated area to the railroad's total cars dispatched in the designated area. Commuter cars shall include passenger cars and motor cars.

(v) *Electric Power Purchased/Produced for Motive Power.* The cost of kilowatt hours consumed for commuter service shall be based on the kilowatt hours developed for commuter service in § 1157.7(f)(1)(v) weighed to reflect the peak period power demands, i.e., time of day and volume of power demanded. A special study may be conducted to develop the peak power demand factor.

(vi) *Servicing Locomotives.* The common costs assigned to these accounts shall be apportioned on the ratio of the total locomotive units (road) serviced in commuter service in the designated area to the railroad's total locomotive units (road) serviced in the designated area.

(vii) *Freight Lost or Damaged—Solely Related; Clearing Wrecks; Other Casualties and Insurance.* The minority user shall be responsible for any costs incurred under these accounts resulting from the operation of the minority service. The dominant user is responsible only for those costs incurred under these accounts resulting from an incident that solely involves the operation of the dominant service. The railroad shall, if the subsidizer agrees, establish a reserve for the purpose of holding the subsidizer harmless from any liabilities under these accounts arising out of the operation of commuter services. Where the commuter service is the minority user, the costs assigned to these accounts for commuter service insurance shall be determined by ascertaining from the railroad's underwriters:

(A) The difference in the current premium if commuter service were not operated and

(B) The additional premium required to hold the railroad and the subsidizers harmless from any liability.

Such amounts shall be apportioned between the several commuter services operated by the railroad either on the basis of the relative passenger-miles (including pass riders) or on the basis of the relative passenger revenues (including pass rider allowances). Where the commuter service is the dominant user, the costs assigned to these accounts for commuter service insurance shall be determined by ascertaining from the railroad's underwriters the premium if the commuter service were operated as the sole user of the properties involved.

(viii) *Fringe Benefits.* Fringe benefits shall be separated between pensions and Health and Welfare benefits with a further separation between running, switching and other. The costs assigned to these accounts for pensions shall be the actual costs that are directly attributable to commuter service. Health and Welfare benefits shall be assigned to commuter service on the ratio of the commuter service amounts in the respective salary and wage accounts to the railroad's system total for these accounts. Expenses for entertainment facility for personal use shall only be included in Health and Welfare benefit costs where it can be clearly demonstrated that the cost was commuter service related.

(ix) *Switch Crews; Controlling Operations; Yard and Terminal Clerical; Operating Switches, Signals, Retarders, and Humps; Locomotive Fuel; Electric Power Purchased/Produced For Motive Power; Servicing Locomotives.* A special study shall be conducted to determine the ratio of the commuter service (diesel, electric) yard locomotive unit hours in the designated area to the railroad's total (diesel, electric) yard locomotive unit hours in the designated area. The common costs assigned to these accounts shall be the amounts in the railroad's accounts for the designated area multiplied by the ratio determined from the study. For this purpose, the term "*locomotive*" shall include motor cars. In conducting such a study, the railroad should recognize the variances of: (A) Weekend versus weekday demand; (B) required yard crew manning to perform the switching services for various users; and (C) the effect of peak service on yard manning.

(x) *Employees Performing Clerical and Accounting Functions; Communication System Operations.* (A) The common costs assigned to these accounts, exclusive of material, shall be subdivided into 4 categories:

(*1*) Ticket sales and service;

(*2*) Other station costs;

(*3*) Station master; and

(*4*) Mail and baggage.

(B) The common costs in these subaccounts, exclusive of material, shall be apportioned on the ratio of commuter service units in the designated area to the total units in the designated area for the respective units:

(*1*) Weighted ticket sales;

(*2*) Passenger on-off count (including pass riders);

(*3*) Trains stopping at stations in the designated area; and

(*4*) Units of mail and baggage handled.

The common material costs assigned to these accounts shall be apportioned on the ratio of the commuter service amounts in these accounts exclusive of material determined above to the railroad's total for these accounts in the designated area.

(xi) *Administration.* The common costs assigned to these accounts shall be apportioned on the ratio of the commuter service amounts in all other transportation accounts in each subcategory except Fringe Benefits and Communication Systems Operations to the railroad's total for these accounts (including the applicable freight accounts) in the designated area.

(xii) *Communication System Operations.* The common costs assigned to these accounts shall be apportioned on the ratio of the total commuter service amounts in the Administration accounts section (§ 1157.7(f)(3)(xi)) assigned to commuter service to the railroad's total for these accounts (including the applicable freight accounts) in the designated area.

(4) *General and Administrative—Fringe Benefits.* Fringe benefits shall be separated between pensions and Health and Welfare benefits with a further separation between running, switching and other. The costs assigned to these accounts for pensions shall be the actual costs that are directly attributable to commuter service. Health and Welfare benefits shall be assigned to commuter service on the ratio of the commuter service amounts in the respective salary and wage accounts to the railroad's system total for these accounts. Expenses for entertainment facilities for personal use shall only be included in Health and Welfare benefit costs where it can be clearly demonstrated that the cost was commuter service related.

(g) *Performance Standards—Penalties and Incentives.* The subsidy agreements may include reasonable provisions as agreed by the parties for penalties for service inferior to stipulated performance standards and incentive payments for superior performance. Penalties withheld from subsidy payments by the subsidizer under such agreements shall be treated as reductions of avoidable costs and incentive payments shall be treated as additions to avoidable costs.

[44 FR 16411, Mar. 19, 1979, as amended at 45 FR 45, Jan. 2, 1980; 45 FR 20107, Mar. 27, 1980. Redesignated at 47 FR 49582, Nov. 1, 1982; 54 FR 38998, Sept. 22, 1989]

§ 1157.8 Valuation of rail properties.

The value of rail properties on which a reasonable return is allowed shall consist of:

(a) The net book value of equipment furnished by the contracting carrier for commuter service, after deduction of accrued depreciation; and

(b) The value of rail properties on which a reasonable return is allowed when the commuter service is the minority user shall consist of the net book value of those roadway and structures properties which are used in commuter service and could be disposed of if the commuter service were discontinued. The net book value shall include the net liquidation value of the properties as of April 1, 1976, determined for their highest and best use for other than rail transportation purposes, plus the value of additions and betterments completed after that date for commuter service. From this amount is subtracted any depreciation accrued from that date and all costs of modifying remaining properties so that non-commuter operations can be continued over them. It shall not include the value of properties owned by public bodies; or of properties owned by the trustees of debtor estates if such properties are entitled to a return computed under § 1155.9;

(c) When the commuter service is the dominant user, it shall be entitled to a return on the values of properties and equipment which could be disposed of if the minority service(s) were discontinued. The value applied to each line segment shall be the acquisition price paid by the commuter authority to Conrail, plus the value of additions and betterments after acquisition for the minority service, less depreciation accrued from the time of acquisition. From this amount is subtracted all costs of modifying remaining properties so that commuter operations can be continued over them.

(d) If the book values of road or equipment property are adjusted upward or downward as a result of final orders of the special court, such adjusted values shall be reflected in future subsidy payments, but without retroactive effect.

[45 FR 47, Jan. 2, 1980. Redesignated at 47 FR 49582, Nov. 1, 1982]

§ 1157.9 Reasonable return on the value of the properties.

The reasonable return shall be 7.5 percent per annum on the sum of the appropriate elements of the investment base computed in accordance with § 1157.8. When the commuter authority is the owner, the 7.5 percent per annum return represents a charge to the other user(s).

[45 FR 47, Jan. 2, 1980. Redesignated at 47 FR 49582, Nov. 1, 1982]

§ 1157.10 Additional rail passenger service.

(a) As used in this section, the term "additional rail passenger service" means rail passenger service other than rail passenger service provided pursuant to sections 304(e)(2) and (4) of the 3R Act, as amended. It includes extended or expanded service and modified routings, which is to be provided over rail properties conveyed to Conrail pursuant to Section 303(b)(1) of the 3R Act, as amended, or over rail properties contiguous to properties conveyed to Amtrak, or any other rail properties contiguous to properties to which a State (or local or regional transportation authority) has obtained access.

(b) If a State (or a local or regional transportation authority in the region offers to provide payment for the provision of additional rail passenger service, Conrail shall undertake to provide the additional service consistent with the discontinuance provisions contained in section 304(e)(2) of the 3R Act, as amended.

(c) An offer to provide payment for the provision of additional rail service shall be made in accordance with section 304(c)(2)(A) of the 3R Act, as amended, and pursuant to §§ 1157.6–1157.9 of these regulations. The offer shall be designed to avoid any additional costs to Conrail arising from the construction or modification of capital facilities or from any additional operating delays or costs arising from the absence of such construction or modification.

(d) The State (or local or regional transportation authority) shall demonstrate that it has acquired, leased, or otherwise obtained access to all rail properties other than those designated for conveyance to Amtrak pursuant to section 206(c)(1)(C) and 206(c)(1)(D) of the 3R Act, as amended, and to Conrail pursuant to section 303(b)(1) of the 3R Act, as amended, necessary to provide the additional rail passenger service. The State shall also demonstrate that it has completed or will complete prior to the inception of the additional rail passenger service, all capital improvements necessary to avoid significant costs which cannot be avoided by improved scheduling or other means on other existing rail service, including rail freight service. Assurance is required that the additional service will not detract from the level and quality of existing rail passenger and freight service.

(e) Conrail shall not be required to operate additional rail passenger service over rail properties leased or acquired from or owned or leased by a profitable railroad in the region.

Appendix I—Subsidy Estimate

The following information is required to be furnished under § 1157.3(b) in accordance with the methodology set forth in §§ 1157.3 through 1157.9. The base period data shall be shown for each item.

REVENUES ATTRIBUTABLE FOR BASE PERIOD

1. Passenger
2. All Other
3. Total Revenues Attributable (lines 1 plus 2)

AVOIDABLE COSTS FOR

4. Maintenance of Way and Structures
5. Maintenance of Equipment
6. Transportation
7. General and Administrative
8. Casualty Reserve Account
9. Performance Standards
10. Total Avoidable Costs (lines 4 through 9)

RETURN ON VALUE FOR

11. Valuation of Property (lines 11a plus 11b)
    a. Book Value of Equipment
    b. Book Value of Roadway and Structures
12. Rate of Return
13. Total Return on value (line 11 times line 12)

ESTIMATED SUBSIDY PAYMENT

14. Subsidy Estimate (line 3 minus lines 10 and 13)
15. Financial Assistance from Subsidizer
16. Estimated Emergency Operating Assistance from the Secretary (line 14 minus line 15)

TRAFFIC AND OPERATING DATA

1. Numbers of Passengers Carried
2. Total Car Miles

Appendix II—Financial Status Report

A railroad entering into a subsidy agreement shall compile the information prescribed below in accordance with the standards set forth in §§ 1157.3 through 1157.9. The actual data for the period to date and a projection to the end of the subsidy period shall be shown for each item.

REVENUES ATTRIBUTABLE FOR ACTUAL AND PROJECTED

1. Passenger
2. All Other
3. Total Revenues Attributable (lines 1 plus 2)

AVOIDABLE COSTS FOR

4. Maintenance of Way and Structures
5. Maintenance of Equipment
6. Transportation
7. General and Administrative
8. Casualty Reserve Account
9. Performance Standards
10. Total Avoidable Costs (lines 4 through 9)

RETURN ON VALUE FOR

11. Valuation of Property (lines 11a plus 11b)
    a. Book Value of Equipment
    b. Book Value of Roadway and Structures
12. Rate of Return
13. Total Return on Value (line 11 times line 12)

SUBSIDY PAYMENT

14. Subsidy Payment (line 3 minus lines 10 and 13)
15. Financial Assistance from Subsidizer
16. Emergency Operating Assistance from the Secretary (line 14 minus 15)

TRAFFIC AND OPERATING DATA

1. Number of Passengers Carried
2. Total Car Miles

Appendix III—Speed Factored Gross Tons Formula (SFGT)

The following formula is required to calculate the SFGT to be used under § 1157.7(f)(1)(B) of this part.

All Track and Roadbed Maintenance:

$$SFGT = Y(.670 + .910\ N) + N\left[1.840 + .870\sqrt{GT} + .058\ GTF + .029\ GTP + .048\ J\left[GTF\left(1 + \frac{VF}{600} + \frac{(VF)^2}{6000}\right) + GTP\left(1 + \frac{VP}{750} + \frac{(VP)^2}{9375}\right)\right]\right]$$

or in cases where freight speeds are equal to or greater than 80 percent of passenger speeds, the freight and passengers terms may be combined as shown below.

$$SFGT = Y(.670 + .910\ N) + N\left[1.840 + .870\sqrt{GT} + .058\ GTF + .029\ GTP + .048\ J\left[GT\left(1 + \frac{V}{600} + \frac{V^2}{6000}\right)\right]\right]$$

where:

GT=Total gross tons of traffic (in millions) per track mile per year.

GTF=Freight traffic gross tons (in millions) per track mile per year.

GTP=Passenger traffic gross tons (in millions) per track mile per year.

N=Number of tracks per route mile.[1]

V=Speed factor (the larger of freight speed or 0.8 times passenger speed).

VF=Freight speed.

VP=Passenger speed.

J=1 for welded rail.
1.5 for bolted rail.

[Y=As shown below]

FRA class of tracks and type of operation	Value of Y		
	Main line	Branch line	Yard and switch
Class 1, 2, 3; freight only up to MGT per mile per year	1.00	0.56	0.14
Class 1, 3; passenger, or Class 1, 2, 3; freight more than 10 MGT per mile per year	1.12	0.66	....
Class 3; passenger, or Class 4, 5, 6; all traffic	1.15	0.69	....

[44 FR 16411, Mar. 19, 1979, as amended at 45 FR 47, Jan. 2, 1980. Redesignated at 47 FR 49582, Nov. 1, 1982]

Subpart B—Notice of Discontinuance of Commuter Service by Amtrak Commuter Services Corporation

AUTHORITY: 49 U.S.C. 504(d)(2).

SOURCE: 48 FR 414, Jan. 5, 1983, unless otherwise noted.

§ 1157.20 Purpose.

Section 1137 of the Northeast Rail Service Act, 45 U.S.C. 504(d)(2), directs the Rail Services Planning Office (RSPO) to issue regulations prescribing the necessary contents of a notice by Amtrak Commuter Services Corporation (Commuter Services Corporation) to discontinue commuter service operations. Commuter Services Corporation may discontinue commuter service upon 60 days notice if (a) a commuter service operating payment (subsidy payment) is not made by a commuter authority in accordance with the Standards For Determining Commuter Rail Service Continuation Subsidies issued by RSPO, or (b) an applicable subsidy payment is not paid when it is due.

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[1] In calculating total SFGT, the value of N shall reflect the total number of tracks presently in place. Any tracks constituting present excess capacity shall be included in this value of N.

Where the commuter authority is the minority user the value of N, used in calculating SFGT for freight and/or intercity passenger service, shall reflect the total number of tracks less the number of tracks (if any) which could be eliminated if commuter service were discontinued. Any tracks constituting present excess capacity shall be included in the value of N when computing SFGT for freight and/or intercity passenger.

Where the commuter authority is the dominant user, the value of N shall reflect the total number of tracks less the number of tracks (if any) which could be eliminated if freight and/or intercity passenger service were discontinued. Any tracks constituting present excess capacity shall be included in the value of N when computing SFGT for commuter service.

The speed factors used shall be governed by the highest authorized speed in the designated area for the respective types of service.

Special studies may be conducted from time to time to update the constants used in the formula.

§ 1157.21 Content and form of the notice

The notice to discontinue commuter service operations shall contain the following information and shall be in the following form:

NOTICE OF DISCONTINUANCE OF COMMUTER SERVICES CORPORATION'S OPERATION OF [NAME OF SUBSIDIZER] COMMUTER RAIL SERVICE

Commuter Services Corporation hereby gives 60 days notice that on [date of proposed discontinuance] it intends to discontinue the operation of commuter rail service currently subsidized by [name of subsidizer] in [identify general area to be affected].

Commuter Services Corporation intends to discontinue the service because [name of subsidizer] has [cite reason for discontinuance in accordance with 45 U.S.C. 504(d)(1)(A) or (B)] as required by section 1137 of the Northeast Rail Service Act of 1981.

Timetables for the commuter service to be discontinued are [list timetables for the affected commuter service]. For further information contact [specify name and telephone number of a designated representative for Commuter Services Corporation and the subsidizer].

Commuter Services Corporation.

By: (Commuter Services Corporation Authorizing Official and Title).

[Date of Notice]

§ 1157.22 Service and posting.

(a) The notice shall be served by certified mail on the subsidizer, the governor, and the designated state agency, and by first class mail on the Rail Services Planning Office and the National Railroad Passenger Corporation. Service shall be made no less than 3 days prior to the date of the notice.

(b) The notice shall be posted in a conspicuous place in each car of all trains affected by the proposed discontinuance and in each station, depot, and other facility involved. The posting of the notice shall be completed prior to the date of the notice.

PARTS 1158–1159—[RESERVED]

PARTS 1160–1174—NONRAIL LICENSING PROCEDURES

PART 1160—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

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Sec.
1160.47 Factual evidence format for protests in intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A).
1160.48 Protestant's rebuttal—intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A) only.
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Subpart C—General Rules Governing the Application Process

1160.60 Applicable rules.
1160.61 Contacting another party.
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1160.64 Requesting oral hearing.
1160.65 Consolidation of applications.
1160.66 Petition to clarify or interpret formally an operating authority.
1160.67 Withdrawal.

AUTHORITY: 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, 10928, and 11102; 5 U.S.C. 553 and 559; 16 U.S.C. 1456.

SOURCE: 54 FR 53637, Dec. 29, 1989, unless otherwise noted.

Subpart A—How to Apply for Operating Authority

§ 1160.1 Applications governed by these rules.

These rules govern the handling of applications for operating authority of the following type:

(a) Applications for certificates and permits to operate as a motor common or contract carrier of property or passengers.

(b) Applications for permits to operate as a household goods freight forwarder.

(c) Applications for certificates, permits, and exemptions for water carrier transportation of property and passengers.

(d) Applications for licenses to operate as a broker of motor vehicle transportation.

(e) Applications to remove operating restrictions from motor property and passenger carrier authorities.

(f) Applications for certificates under 49 U.S.C. 10922(c)(2)(A) to operate as a motor common carrier of passengers in intrastate commerce on a route over which applicant holds interstate authority as of November 19, 1982.

(g) Applications for certificates under 49 U.S.C. 10922(c)(2)(B) to operate as a motor common carrier of passengers in intrastate commerce on a route over which applicant has been granted or will be granted interstate authority after November 19, 1982.

NOTE: Applications for emergency temporary and temporary motor and water carrier authority are filed on Form OP-1. Rules governing these applications are set forth at parts 1162 and 1163.

§ 1160.2 Procedures used generally.

(a) *Modified procedure.* The Commission will handle licensing application proceedings using the modified procedure, if possible. The applicant and protestants send statements made under oath (verified statements) to each other and to the ICC. There are no personal appearances or formal hearings.

(b) *Oral hearings.* Oral hearings are used infrequently. Either an applicant or a protestant may request oral hearing at any time during the proceeding, using the procedures set forth at § 1160.64.

NOTE: Intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A) will be decided on the basis of the written record. There will not be an opportunity for oral hearing.

§ 1160.3 Starting the application process: Form OP-1.

(a) All applicants shall use Form OP-1 (Effective 6/1/90).

(b) Obtain the form at Commission regional and field offices, or call the Office of the Secretary at (202) 275-7428. Additional information concerning the application process and required submissions is available from the Office of Public Assistance at (202) 275-7597.

[54 FR 53637, Dec. 29, 1989, as amended at 55 FR 38809, Sept. 21, 1990]

§ 1160.4 Types of applications.

(a) "Fitness only" applications. Certain types of motor property and passenger applications require only the finding that the applicant is fit, willing and able to perform the involved operations and to comply with all applicable statutory and regulatory provisions. These applications can be opposed only on the grounds that applicant is not fit or does not fall into a fitness-only category of service under the Interstate Commerce Act. These applications are:

(1) Motor common carrier of property transportation to serve any community not regularly served by a certificated motor common carrier.

(2) Motor common carrier of property transportation to provide service as a direct substitute for complete abandonment of all rail service in a community.

(3) Motor common carrier transportation for the United States Government of property (except used household goods, hazardous or secret materials, and sensitive weapons and munitions).

(4) Motor common carrier property transportation of shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds.

(5) Motor common or contract carrier of property transportation of food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agriculture limestone and other soil conditioners, and agricultural fertilizers, when the transportation is provided with the owner of the motor vehicle in the vehicle (except in emergency situations). After issuance of the authority, such transportation (measured by tonnage) shall not exceed, on an annual basis, the transportation provided by the motor vehicle (measured by tonnage) which is exempt from the Commission's jurisdiction under 49 U.S.C. 10526(a)(6).

(6) Transportation for the United States Government of used household goods that is incidental to a pack-and-crate service on behalf of the Department of Defense.

(7) Motor carrier brokerage of general commodities (except household goods).

(8) Privately-funded motor common carrier of passengers charter transportation.

(9) Privately-funded motor common carrier of passengers special transportation.

(10) Motor common carrier of passengers authority to serve any community not regularly served by a certificated motor common carrier of passengers.

(11) Motor common carrier of passengers authority to provide service as a direct substitute for abandonment or discontinuance of all rail and commercial-air passenger service in a community.

(12) Motor common carrier of passengers transportation to any community where the only interstate motor common carrier of passengers has applied to discontinue the interstate service under 49 U.S.C. 10925(b) or to reduce intrastate service under 49 U.S.C. 10935 to less than one trip per day (excluding Saturdays and Sundays).

(13) Motor contract carrier of passengers transportation.

(b) Motor passenger "public interest" applications. Certain types of applications require the finding that applicant is fit, willing, and able, and, when protested, whether the transportation to be authorized is not consistent with the public interest. In addition to the grounds listed in § 1160.4(a), a protestant may oppose the application on the grounds that a grant of the application will not be consistent with the public interest. These applications are:

(1) Motor common carrier of passengers transportation provided by an applicant receiving governmental financial assistance for the purchase or operation of buses, or by an applicant that is an operator for such a recipient, except to perform a service described in § 1160.4(a) (10), (11) or (12).

(2) Motor common carrier transportation of passengers over regular routes in interstate or foreign commerce, except to perform a service described in § 1160.4(a) (10), (11) or (12).

(3) Motor common carrier transportation of passengers in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) on regular routes over which applicant has been or will be granted authority in interstate commerce after November 19, 1982.

(c) Intrastate motor passenger applications under 49 U.S.C. 10922(c)(2)(A). Applications filed by motor common carriers of passengers that held authority on November 19, 1982, to provide interstate transportation of passengers on a route over which the carrier now proposes to provide regular-route transportation entirely in one State will be granted a certificate to provide the intrastate transportation if the Commission finds that the carrier is fit, willing, and able to provide the intrastate transportation and to comply with Commission rules and regulations, unless the Commission finds, on the basis of evidence presented by a person objecting to the issuance of the certificate, that the transportation to be authorized would directly compete with a commuter bus operation and would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed. The Commission will take final action upon these applications not later than 90 days after the application is filed with the Commission.

NOTE: Commuter bus service or operation means short-haul, regularly scheduled passenger service provided by motor vehicle in metropolitan and suburban areas, whether within or across the geographical boundaries of a State, and used primarily by passengers using reduced fare, multiple-ride, or commutation tickets during morning and evening peak periods of operations.

(d) Motor property common carrier applications. These applications require a finding that:

(1) The applicant is fit, willing, and able to provide the involved transportation and to comply with all applicable statutory and regulatory provisions; and

(2) The service proposed will serve a useful public purpose, responsive to a public demand or need.

(e) Water common carrier applications. These applications require a finding that:

(1) The applicant is fit, willing, and able to provide the involved transportation and to comply with all applicable statutory and regulatory provisions; and

(2) The transportation to be provided is or will be required by present or future public convenience and necessity.

(f) Motor and water contract carrier, household goods property broker, and household goods freight forwarder applications. These applications require a finding that:

(1) The applicant is fit, willing, and able to provide the involved transportation and to comply with all applicable statutory and regulatory provisions; and

(2) The transportation to be provided will be consistent with the public interest and the national transportation policy of 49 U.S.C. 10101.

§ 1160.5 Commission review of the application.

(a) ICC staff will review the application for correctness, completeness, and for adequacy of the evidence (the *prima facie* case).

(1) Minor errors will be corrected without notification to the applicant.

(2) Materially incomplete applications will be rejected. Applications that are in substantial compliance with these rules may be accepted.

(3) All motor carrier applications will be reviewed for consistency with the Commission's operational safety fitness policy as set forth in Ex Parte No. 55 (Sub-No. 71), "Notice of Policy and Final Rule Governing Submission and Evaluation of Safety Fitness Evidence in Motor Carrier Licensing Proceedings," 5 I.C.C.2d 94 (1988), as modified in Ex Parte No. 55 (Sub-No. 69), "Rules Governing Applications for Operating Authority—Revision of Form OP-1," 6 I.C.C.2d 266 (1989). Applicants with deficient safety ratings from DOT will have their applications rejected in a letter notice and their filing fees returned.

(4) An employee board of the Commission appointed under § 1011.6(k) will review completed applications that are in conformance with the Commission's safety fitness policy. The entire Commission will review motor property applications filed by applicants that hold a "conditional" safety fitness rating from DOT, that do not seek to transport hazardous commodities, and that present evidence responsive to the Commission's safety fitness policy. The employee board, or in the case of conditionally-rated, non-hazardous motor property applicants, the Commission, determines whether there is adequate evi-

dence to warrant publication of the authority applicant seeks in the *ICC Register* as a preliminary grant. If there is not, the application will be rejected in a letter notice to applicant, without prejudice to refiling once deficiencies have been corrected. Applicants that refile their applications may refer to the docket number and fee stamp number assigned to the prior filing and no additional filing fee will be required. An applicant may appeal rejections as provided under § 1160.6.

(b) A summary of the application will be published as a preliminary grant of authority in the *ICC Register* to give notice to the public in case anyone wishes to oppose the application.

(c) If the *ICC Register* publication does not properly describe the authority being sought because of ministerial error, applicant shall inform the Office of Proceedings, Motor Section, as soon as possible. Where notification is received within 10 days of the publication, ministerial errors will be corrected and the notice will be republished. Notifications after 10 days will result in republication only at the Commission's discretion and may result in an application being rejected without prejudice to refiling.

§ 1160.6 Appeals to rejections of the application.

(a) An applicant has the right to appeal rejection of the application. The appeal must be filed at the Commission within 10 days of the date of the letter of rejection.

(b) If the appeal is successful and the filing is found to be proper, the application shall be deemed to have been properly filed as of the decision date of the appeal.

§ 1160.7 Changing the request for authority or filing supplementary evidence after the application is filed.

(a) Once the application is filed, the applicant may supplement evidence only with approval of the Commission.

(b) Amendments to the authority proposed in the application generally are not permitted, but in appropriate instances may be entertained at the discretion of the Commission.

§ 1160.8 After publication in the ICC Register.

(a) Interested persons have 45 days to file protests. *See* subpart B of this part.

(b) If no one opposes the application, the grant published in the *ICC Register* will become effective.

(c) If no one opposes the application for an extension of authority, the grant published in the *ICC Register* will be made effective by issuance of a certificate, permit, or license. If no one opposes an application for initial authority, the grant published in the *ICC Register* will be made effective by a Commission notice outlining compliance requirements that must be met before applicant commences the proposed service.

§ 1160.9 Obtaining a copy of the application package.

After publication, interested persons may request a copy of the application by writing to the Commission-designated contract agent (as identified in the *ICC Register*), Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. The request must be accompanied by a check or money order for $10 made payable to such contract agent or by contacting the contract agent at (202) 289-4357 [TDD for hearing impaired: (202) 275-1721] and arranging billing as acceptable to the agent.

§ 1160.10 Opposed applications.

If the application is opposed, opposing parties are required to send a copy of their protest to the applicant.

§ 1160.11 Filing a reply statement.

(a) If the application is opposed, applicant may file a reply statement. This statement is due at the Commission within 60 days of the *ICC Register* publication (30 days for intrastate passenger applicants under 49 U.S.C. 10922(c)(2)(A)).

(b) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

NOTE: In passenger carrier "public interest" applications, if a protestant has raised the "public interest" issue under § 1160.4(b), an applicant may submit any reply evidence to the "public interest" issue. In intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A), if a protestant has raised the issue of the application's effect on commuter bus service operations under § 1160.4(c), an applicant may submit any reply evidence in response to the commuter service issue.

(c) The reply statement need not be notarized or verified. Applicant understands that the oath in the application form applies to all evidence submitted in the application. Separate legal arguments by counsel need not be notarized or verified.

§ 1160.12 After all statements are submitted.

(a) When the proceeding is to be handled under the modified procedure, the next notification to the parties will be the service of the initial decision.

(b) If the proceeding is to be handled by oral hearing, parties will receive a notice to this effect.

§ 1160.13 Applicant withdrawal.

If the applicant wishes to withdraw an application, it shall request dismissal in writing.

§ 1160.14 Household goods freight forwarder applicants only.

An applicant for household goods freight forwarder authority shall submit the following additional information with the application: Applicant shall state whether it is a person engaged principally in the business of manufacturing, buying, or selling articles and commodities, and whether it controls, is controlled by, or is under common control with any such person. If yes, applicant shall describe such persons and advise to what extent such persons use the services of household goods freight forwarders; or if applicant is such a person, whether it performs its own similar operations of assembling, consolidating, and shipping in connection with the transportation of such articles or commodities.

§ 1160.15 Water carrier applicants only.

(a) If an applicant seeks approval of dual operations under 49 U.S.C. 10930, it must specify those that would result from a grant of the application and must present evidence to establish that such operations are consistent with the public interest and the national transportation policy as set forth at 49 U.S.C. 10101.

(b) If applicant is a water common carrier seeking a revised certificate covering extension of service over newly opened waterways pursuant to 49 U.S.C. 10922(g)(3)(B), it must furnish the following with its application:

(1) A description of the portion of the waterway project newly opened for navigation, including the U.S. Engineer District, project number, description of project, and date opened for navigation;

(2) A description of the operation performed thus far on the uncompleted portion of the waterway newly opened for navigation, including the date service was extended and points served (*see* § 1166.3); and

(3) A description of operations performed under the present certificate authorizing service on the previously completed portion of the waterway, naming points served, indicating when service was commenced, and if the operation has been continuous.

§ 1160.16 Passenger carrier applicants only.

Applicants for various passenger carrier service categories must submit the following additional information with their applications:

(a) If the application is to serve a "community not regularly served" under § 1160.4(a)(10), describe the location of the community and the interstate or other major highways which serve the community. If known, state the last date of service from other carriers and their identity, and the subsequent dates when service was requested from these carriers.

(b) If the application is for transportation services as a substitute for discontinued rail or commercial air passenger service under § 1160.4(a)(11), give the location of the points sought to be served by cross-referencing each specific community to the particular abandonment proceeding relied upon; certify that rail or commercial air passenger service, or both, was offered at the points for which authority is sought; and certify that all rail and commercial air passenger service has been discontinued and give the effective date of the latest discontinuance. The application must be filed within 180 days after the latest discontinuance becomes effective. The 180-day period begins to run either on the effective date of the certificate of abandonment issued by the appropriate government agency or, in a noncertificate case, on the date of a pronouncement by that agency regarding the abandonment. In situations where applications are filed before the actual abandonment takes place, the applicant must certify that after rail or commercial air passenger services cease on the line to be abandoned, no rail and commercial air passenger service by any carrier will remain. In such situations, the Commission will issue the certificate, but operations may begin only after the applicant files an affidavit certifying that all rail and commercial air passenger service has actually terminated at the granted points.

(c) If the application is for intrastate passenger authority over routes for which interstate operating authority already has been issued, under either 49 U.S.C. 10922(c)(2)(A) (§ 1160.4(c)), or 49 U.S.C. 10922(c)(2)(B) (§ 1160.4(b)(3)), submit a proposed draft of a certificate for issuance upon grant of the authority sought. The draft shall include:

(1) The complete service description contained in each interstate authority for the routes over which applicant seeks to provide intrastate transportation, numbered separately by subnumber; and

(2) The necessary modifications of the interstate authority authorizing the proposed intrastate operations.

The draft certificate shall contain the service descriptions in the interstate authorities in the same format as in each of the authorities which will be superseded upon issuance of the draft certificate. Applicant should submit sufficient information under this paragraph for the Commission to determine readily the precise portions of the existing authorities upon which applicant's proposal is based.

NOTE: *Combination of authorities.* An intrastate passenger applicant may request intrastate authority in a single application on the basis of more than one underlying interstate authority if the underlying authorities are reasonably related. In applications based on more than one authority, the requests shall be clearly segregated according to each authority. Failure to comply may result in a rejection of the application.

Repeat applications. An interstate authority may be the basis for more than one intrastate application. However, a repeat application should not be filed before the first application has been finally processed by the Commission.

§ 1160.17 Motor property "fitness" applicants only.

Applicants for various categories of motor property "fitness only" authority under 49 U.S.C. 10922(b)(4) must submit the following additional information with their applications:

(a) If the application is to serve a "community not regularly served" under § 1160.4(a)(1), describe the location of the community and the highways which serve the community. If known, state the last known date of service from other carriers and their identity, and the date when service was requested from these carriers.

(b) If the application is for transportation service as a direct substitute for complete abandonment of all rail service to a community under § 1160.4(a)(2), submit:

(1) Docket number, approval date and effective date of the Commission's decision approving the abandonment, or, date of the Commission's recommendation or pronouncement in a noncertificate abandonment.

(2) Description of the location of the points sought to be served, indicating to what portion of the rail line they are adjacent (submit maps where obscure rural points are involved), and cross-referencing each specific community to the pertinent abandonment proceeding relied on.

(3) Certification that rail service was offered at the points for which authority is sought.

(4) Certification that all rail service has been terminated (give date if known), or

(5) If rail service has not yet been terminated, state that fact and submit

certification that, after rail service does cease on the line to be abandoned, no rail service by any carrier will remain to the involved community.

(6) When the certification in paragraph (b)(5) of this section is made, and applicant has otherwise established its right to a certificate, the Commission will issue a certificate subject to the filing, when rail service is terminated, of another certification that all service has ceased at the granted points.

(7) *Filing period.* Applications under this subsection must be filed no later than 120 days (plus extensions) after the effective date of the Certificate of Abandonment issued by the Commission, or, in a noncertificate abandonment, 120 days after the issuance of a recommendation or other pronouncement by the Commission regarding the abandonment.

§ 1160.18 Applicability of oath.

Separate verification of statements made under §§ 1160.14–1160.17 is not necessary. The oath in the application form applies to all factual statements.

Subpart B—How To Oppose Requests For Authority

§ 1160.40 Definitions.

A person wishing to oppose a request for permanent authority files a protest. A person filing a valid protest becomes a protestant.

§ 1160.41 Time for filing.

A protest shall be filed (received at the Commission) within 45 days after notice of the application appears in the *ICC Register* (25 days for protests in intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A)). A copy of the protest shall be sent to applicant's representative at the same time. Failure timely to file a protest waives further participation in the proceeding.

§ 1160.42 Contents of the protest.

(a) All information upon which the protestant plans to rely is put into the protest.

(b) A protest must be verified, as follows:

I, ________________, verify under penalty of perjury under laws of the United States of America, that the information above is true and correct. Further, I certify that I am qualified and authorized to file this protest. (*See* 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties.)

(Signature and Date)

(c) A protest not in substantial compliance with these rules may be rejected.

(d) A protestant must file two separate types of evidence: qualifications evidence under the format in § 1160.43 and factual evidence according to the applicable guidelines in § 1160.44, 1160.45, 1160.47, or 1160.49.

§ 1160.43 Protestant qualifications information—all protestants.

Protestant must submit this information in separately numbered paragraphs:

(a) Docket number of application being opposed.

(b) Name and domicile of protestant. Include lead docket number of ICC authority, if any.

(c) Name and address of protestant's representative, if any.

(d) Name and address of witness presenting the evidence, and why qualified to speak for protesting party.

(e) Description of the extent to which the person seeking to protest possesses authority to handle the traffic for which authority is applied, is willing and able to provide service that meets the reasonable needs of the shippers or public involved, and has either performed service within the scope of the application during the 12-month period before the application was filed or has actively in good faith solicited business within the scope of the application during that period; or

(f) Description of any application which the prospective protestant has pending before the Commission which was filed before the applicant's and which covers substantially the same traffic; or

(g) Description of any other legitimate interest not contrary to the transportation policy set forth in 49 U.S.C. 10101(a), or of any right to intervene under a statute. Intervention on this basis is discretionary. A person seeking to qualify under this paragraph must submit a petition requesting leave to intervene which describes in detail the circumstances warranting its participation and how they are consistent with 49 U.S.C. 10101(a). The Commission normally shall permit intervention when the person seeking to intervene shows that a proceeding is novel or of first impression, is of industrywide importance, or has significant economic impact. Anyone may protest an application on the grounds of safety fitness. Notwithstanding other provisions of this paragraph, any petition requesting leave to intervene based on safety fitness will be permitted, and the Commission will consider the protest contained therein.

NOTE: A motor contract carrier may not protest an application to provide transportation as a motor common carrier.

§ 1160.44 Factual evidence format for protests in property and passenger fitness applications.

Protestant must submit this information in separately numbered paragraphs:

(a) A description of the specific grounds upon which it is alleged that applicant cannot meet the statutory fitness criteria.

(b) Alternatively, evidence that the application does not properly fall within the scope of one of the statutorily described categories.

NOTE: If the Commission finds that the application does not properly fall within the scope of one of the categories, the application shall be dismissed without prejudice to the filing of an application for authority under other criteria.

(c) Legal argument (optional).

(d) Verification.

(e) Certificate of service.

(f) Request for oral hearing (optional).

§ 1160.45 Factual evidence format for passenger public interest applications.

Protestant must submit this information in separately numbered paragraphs:

(a) Evidence that a grant of the application would not be consistent with the public interest. Four factors are to be considered, to the extent applicable, and given equal weight in determining whether authorization would be consistent with the public interest:

(1) The transportation policy of section 10101(a) of this title.

(2) The value of competition to the traveling and shipping public.

(3) The effect of issuance of the certificate on motor carriers of passenger service to small communities; and

(4) Whether issuance of the certificate would impair the ability of any other motor common carrier of passengers to provide a substantial portion of the regular-route passenger service which such carrier provides over its entire regular-route system. Diversion of revenue or traffic shall not itself be sufficient to support such a finding. The routes and services of affiliates and subsidiaries of protestant shall be considered part of protestant's system for this purpose.

(b) Evidence that applicant cannot meet the statutory fitness criteria.

(c) Legal argument (optional).

(d) Verification.

(e) Certificate of service.

(f) Request for oral hearing (optional).

§ 1160.46 Protestant's rebuttal—passenger public interest applications only.

(a) When a protestant has protested an application on public interest grounds as provided under § 1160.4(b), and an applicant has replied to the public interest arguments under § 1160.11(b), the protestant may file a rebuttal statement within 70 days of the *ICC Register* publication.

(b) The rebuttal statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(c) The rebuttal statement and separate legal argument by counsel need not be notarized or verified. Protestant understands that the oath in the protest applies to all evidence submitted in the application.

§ 1160.47 Factual evidence format for protests in intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A).

Protestant must submit this information in separately numbered paragraphs:

(a) Evidence to establish that the intrastate service would directly compete with a commuter bus operation, and that the competition would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed.

(b) A summary, description, or copy of the specific commuter authorities in conflict with that sought in the application, if pertinent.

(c) Information to demonstrate: that the proposed service is directly competitive with a commuter bus service, that the proposed service will adversely affect commuter bus service in a significant manner, and the degree to which all commuter bus services in the area where the competing service would be performed would be adversely affected.

(d) Evidence that applicant is not fit, willing, or able under the statutory fitness criteria.

(e) Legal argument (optional).

§ 1160.48 Protestant's rebuttal—intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A) only.

If the protestant has filed a protest under § 1160.4(c), and applicant has replied to the commuter operations arguments under § 1160.11(b), protestant may file a rebuttal statement at the Commission within 35 days after publication in the *ICC Register*. The rebuttal statement shall contain no new evidence, but shall only rebut or further explain matters previously raised concerning commuter operations. The rebuttal need not be verified.

§ 1160.49 Factual evidence format (except fitness only, passenger public interest, and passenger intrastate applications).

Protestant must submit this information in separately numbered paragraphs:

(a) A summary, description or copy of the specific authorities in conflict with that sought in the application. Protests containing copies of authority or authority abstracts which are more than 5 pages in length may be rejected.

(b) A description of the type and amount of equipment and facilities available to meet the avowed purpose of the application.

(c) A description of present operations that pertain to the application, including a description of the specific services provided to those supporting the application or within the same territory.

(d) Adverse impacts on its business generally and on the public, such as:

(1) Need to close terminals or other facilities;

(2) Number of employees that would be furloughed or dismissed;

(3) Resulting imbalance or inefficiencies caused to its operations;

(4) Effects on fuel efficiency; or

(5) Inability to continue its existing service to the public due to a reduction in total business, or loss of essential services that would not be replaced, or other factors.

(e) Evidence that applicant is not fit, willing, or able to comply with the appropriate statutes or regulations governing its activities.

(f) Legal or other argument (optional).

(g) Verification.

(h) Certificate of service.

(i) Any request for oral hearing.

Subpart C—General Rules Governing the Application Process

§ 1160.60 Applicable rules.

Generally, all application proceedings are governed by the Commission's Rules of Practice at 49 CFR part 1100 *et seq.*, except as designated below.

§ 1160.61 Contacting another party.

When a person wishes to contact a party or serve a pleading or letter on that party, it shall do so through its representative. The phone number and address of applicant's representative shall be listed in the *ICC Register*.

§ 1160.62 Serving copies of pleadings.

(a) An applicant must serve all pleadings and letters on the Commission and all known participants in the proceeding, except that a reply to a motion need only be served on the moving party.

(b) A protestant need serve only the Commission and applicant with pleadings or letters.

§ 1160.63 Replies to motions.

Replies to motions filed under these rules are due within 10 days of the date the motion is filed at the Commission.

§ 1160.64 Requesting oral hearing.

(a) If an applicant or protestant believes that a proceeding should be orally heard, the person may request an oral hearing.

(b) The request shall specifically state the evidence that would be presented, the reason why the evidence is material to determine the merits of the proceeding, why an oral hearing with cross-examination is necessary to bring it out, and what evidence already in the record would be contravened (with specific page reference).

(c) The Commission intends to assign matters for oral hearing only where use of modified procedures would prejudice a party, material issues of decisional fact cannot adequately be resolved without an oral hearing, or assignment of an application for oral hearing is otherwise required by the public interest.

(d) Denial of an oral hearing request will not be made in writing where the denial is made prior to issuance of the initial decision. The request will be deemed denied when the proceeding is handled under the modified procedure.

§ 1160.65 Consolidation of applications.

(a) Applicants may request consolidation of applications. The request shall be made when the applications to be consolidated are filed. Requests for consolidation shall be made in writing to the Office of Proceedings, Motor Section.

(b) Requests to consolidate applications not currently filed shall only be considered to the extent that the applications are filed within 5 days of each other.

(c) Representatives of the consolidating applicants shall indicate their agreement with the consolidating either in the initial request or in their individual submissions. If mutual agreement has been reached in advance, one representative may indicate representatives' assent to the consolidation.

(d) The applications will be published in the *ICC Register* and their consolidation will be indicated. Protestants may file a single protest which will apply to all the proceedings.

§ 1160.66 Petition to clarify or interpret formally an operating authority.

(a) A person seeking to clarify or interpret its operating authority shall file a petition under these rules.

(b) No application form need be used. Petitioner shall file its entire argument with the petition.

(c) Notice of the petition will be published in the *ICC Register*. Petitioner may file a rebuttal to any opposing argument.

§ 1160.67 Withdrawal.

A protestant wishing to withdraw from a proceeding shall inform the Commission and applicant in writing.

PART 1161—ISSUANCE UNDER 49 U.S.C. 10931 OF CERTIFICATES OF REGISTRATION TO SINGLE-STATE MOTOR CARRIERS

Sec.

1161.1 Applicability.
1161.2 Notice.
1161.3 State application proceedings.
1161.4 Application for certificate of registration.
1161.5 Appeal of State decision.
APPENDIX TO PART 1161—FORM OF NOTICE OF FILING STATE APPLICATIONS

AUTHORITY: 49 U.S.C. 10321 and 10931; 5 U.S.C. 559.

SOURCE: 55 FR 11203, Mar. 27, 1990, unless otherwise noted.

§ 1161.1 Applicability.

These rules govern applications for Certificates of Registration based on intrastate certificates issued by a State that concurrently find that the public convenience and necessity require operations in interstate and foreign commerce.

§ 1161.2 Notice.

An applicant for a Certificate of Registration shall notify the appropriate State authority of such filing consistent with its rules. Notice to interested persons will be given by publishing in the *ICC Register* a summary of the authority sought (prepared by the State in the form described in the appendix). The summary must be sent to the Interstate Commerce Commission sufficiently in advance of any State hearing on the application to afford interested persons a reasonable opportunity to be heard. No other notice is necessary, unless required by the State.

§ 1161.3 State application proceedings.

State rules govern the conduct of the State proceeding. Protests and requests for information will be directed to the State. The record in the State proceeding will be made available to the parties upon payment of costs prescribed by the State.

§ 1161.4 Application for certificate of registration.

(a) *Time for filing.* Within 30 days after service of the State certificate (containing the recitations required by 49 U.S.C. 10931), applicant shall file with the Commission an Application for Motor Certificate of Registration, Form OP-OR-100. Except for cause shown, failure to file an application within the 30-day period will waive any right to obtain a Certificate of Registration.

(b) *Notice.* The Commission will give notice of the application's filing date and docket number to the applicant and to all interested persons in the State proceeding.

(c) *Parties.* Any party that opposed the authorization of operations in interstate or foreign commerce in the States proceeding will be considered a party in the Certificate of Registration proceeding. Other persons may participate only upon a showing of good cause.

§ 1161.5 Appeal of State decision.

Any opposing party may file an appeal with the Commission within 30 days after the application for a Certificate of Registration is filed. The appeal should include a certified copy of the complete record made before the State (including a transcript of any testimony taken and any exhibits filed, at the expense of the person appealing, unless the record has already been filed by another party). Applicant may file a reply to an appeal within 20 days. Copies of each appeal and reply shall be served on the State Commission and on all parties to the State proceeding. The filing of an appeal will not affect the institution of intrastate operations under the State certificate. Failure to file an appeal waives further participation in the Certificate of Registration proceeding. The application and related appeals will be handled in a single proceeding. A Commission decision is final.

APPENDIX TO PART 1161—FORM OF NOTICE OF FILING STATE APPLICATION

Part I

(To be completed by applicant)

Notice is given that applicant has filed with ———

____

(Name of State Authority)

an application for a certificate to conduct motor common carrier operations in intrastate commerce; that, in connection with such operations, applicant also is seeking authority to engage in transportation in intrastate and foreign commerce within limits which do not exceed the scope of the interstate operations which may be authorized to be conducted; and that the intrastate and interstate operations proposed to be conducted are as set forth below.

1. ______________________________

(Name and business address of applicant)

____

(Street) (City) (State)

2. ______________________________

(Name and address of applicant's representative, if any)

____

(Street) (City) (State)

3. Describe in full the operations proposed to be conducted in intrastate commerce, together with the extent to which applicant is seeking authority in connection with such

intrastate operations to engage in transportation in interstate and foreign commerce.

____
(Signature)

____
(Title)

Date ______ 19___.

Part II

(To be completed by State Authority)

Date for filing application ______
Docket number assigned ______
Date, time, and place application has been assigned for hearing, if known ______

____
(Signature)

____
(Title)

____
(Name of State Authority)

Date this notice forwarded to Interstate Commerce Commission, Washington, DC 20423, ______, 19___.

PART 1162—TEMPORARY AUTHORITY (TA) AND EMERGENCY TEMPORARY AUTHORITY (ETA) PROCEDURES UNDER 49 U.S.C. 10928

Sec.
1162.1 Controlling legislation and definitions.
1162.2 Filing of applications.
1162.3 Processing of applications.
1162.4 Determination of applications.
1162.5 Rates, fares, charges, and special permission applications.
1162.6 Appeals and special procedures.
1162.7 State registration of temporary authorities—motor carriers.
1162.8 Insurance and service of process—motor carriers.

AUTHORITY: 49 U.S.C. 10321; 10928; 5 U.S.C. 559.

SOURCE: 48 FR 51628, Nov. 10, 1983, unless otherwise noted.

NOTE: Rules governing extension of temporary operating authority or approvals are contained in Part 1163 of this title.

§ 1162.1 Controlling legislation and definitions.

(a) *Controlling legislation.* 49 U.S.C. 10928 (which the regulations in this part are designed to implement) provides that the Interstate Commerce Commission may grant a motor carrier or water carrier temporary authority (TA) to provide transportation to a place or in an area having no carrier capable of meeting the immediate needs of the place or area. Such grants of authority are limited by statute to not more than 180 days in the case of a water carrier, and not more than 270 days in the case of a motor carrier. Emergency temporary authority (ETA) may be granted to a motor carrier or water carrier for a period of not more than 30 days, and the Commission may extend such authority under the procedure set forth at § 1162.2(e) of this part. A grant of ETA is not considered as reducing the statutory maximum of 270 days of TA in the case of a motor carrier or 180 days of TA in the case of a water carrier. Extensions of TA beyond these statutory limits are governed by the rules contained in Part 1163 of this title. A grant of TA shall create no presumption that corresponding permanent authority will be granted.

(b) *Definitions.* As used in this part, the following words and terms are construed as follows:

(1) *"Temporary authority"* (TA). Limited term operating authority issued pursuant to 49 U.S.C. 10928 to authorize transportation service for which there is an immediate need which cannot be met by existing carrier service.

(2) *"Emergency temporary authority"* (ETA). Limited term operating authority issued pursuant to 49 U.S.C. 10928 to authorize transportation service for which there is an immediate need for service due to emergencies which cannot be met by existing carrier service, in which there is not sufficient time to process an application for TA.

(3) *"Motor common carrier," "motor contract carrier," "water common carrier," "water contract carrier,"* and *"person."* Same as defined in 49 U.S.C. 10102.

§ 1162.2 Filing of applications.

(a) *General.* All applications for TA and ETA are to be filed at the Regional Office which has jurisdiction over the area in which applicant's headquarters are located. The Regional Office will review all applications, after consultation with the affected field offices as appropriate, and then transmit them with recommendations as to their disposition to the Regional Motor Carrier Board. The Regional Offices will maintain records of authorized carriers with headquarters in their region and their operating authorities. The staff members of the Regional Offices, as well as those of the field offices within their jurisdiction, will be available for: Consultation; giving assistance in obtaining carrier service; providing guidance in the preparation of TA or ETA applications and related supporting material; and providing assistance on rate, insurance, and other required filings. Regional and Field Offices will furnish copies of necessary forms upon request.

(b) *How and where filed.* (1) Applicants for TA or ETA shall file Form OP-1 in accordance with the instructions accompanying that form. The envelope containing the form shall be clearly marked "ETA Application" and/or "TA Application."

(2) The signed original and one copy of each application and all supporting documents shall be filed with the Regional Office which has jurisdiction over applicant's point of domicile, or at such other location as the Commission may designate in special circumstances.

NOTE: Applicants for TA and/or ETA who have simultaneously filed for corresponding permanent authority on the same Form OP-1 must submit the original and one copy of the form to Commission Headquarters for processing the permanent licensing request and must submit two (2) copies of the form to the appropriate Regional Office for processing the temporary authority request.

(3) Where an applicant for TA also has applied or will apply for corresponding ETA, the application shall include the statement: "An underlying ETA seeks —— days authority" in its application. Applicant should also include the "R" docket number of the ETA, if known.

(c) *Filing fees.* A filing fee as designated at 49 CFR 1002.2 shall accompany each TA and ETA application. Method of payment options are set forth on the fees schedule that accompanies Form OP-1.

NOTE: TA and ETA applicants who have concurrently filed for corresponding permanent operating authority on the same Form OP-1 must submit the TA and/or ETA filing fee(s) to the Regional Office processing such applications.

(d) *Supporting statements.* Each application shall be accompanied by "Certificate(s) of Support" designed to establish an immediate need for service which cannot be met by existing carriers. Such supporting evidence should follow the format and contain all the information prescribed on the "Certificate of Support" portion of Form OP-1.

(e) *Special procedures for filing ETA applications.* (1) ETA shall be applied for only where emergency conditions exist which do not allow sufficient time to process and application for temporary authority.

(2) In cases where the urgency of the situation warrants, the supporting statement of those having the immediate need for carrier service may be furnished by telegram. However the telegram shall contain substantially the factural information which is more fully described in paragraph (c) of this section. The telegram shall be sent to the Regional Office that is handling the application.

(3) The filing of ETA applications by telegram, telephone, or facsimile (FAX) document shall be acceptable in exigent circumstances. Confirmation shall be made by filing Form OP-1 (with the "Certificate(s) of Support") within 10 working days of the telegram, telephone, or FAX filing.

(4) When the emergency is found to continue beyond the period of the initial 30-day grant, the ETA may be extended until disposition is made of the longer TA application. Applications seeking extension of ETA may be filed in two ways:

(i) *If corresponding TA application is filed within 15 days of the date of filing the initial ETA application.* If an applicant intends to file, within 15 days of the date of filing an application for ETA, a corresponding application seeking TA for a period of 180 or more days, applicant may state on the

ETA application form: "Applicant certifies that, within 15 days of the date of filing this application, a corresponding application shall be filed seeking TA for a period of at least 180 days, and requests that an automatic 90-day extension of any ETA granted be issued." An application for ETA which contains this certification shall be accompanied by the fee applicable for the extension, which is $10. The filing of the corresponding TA application, within the 15-day period, shall automatically extend the ETA for 90 days. If a corresponding TA application is not filed within the 15-day period, the ETA will automatically expire at the end of the initial 30-day period. The Commission reserves the right to revoke any ETA (or extension). Should corresponding TA be granted, it shall be effective upon compliance with the requirements of § 1162.3(c) of this part, and any corresponding ETA shall automatically be revoked at that time. The statutory 180-day or 270-day duration of the TA shall begin to run upon service of the TA decision. Should corresponding TA be denied, either initially or on appeal, the decision will automatically have the effect of revoking any corresponding ETA 15 days after the service date of the decision. Any outstanding ETA which would expire by its own terms prior to such time is not affected.

(ii) *If corresponding TA application is not filed within 15 days of the date of filing the initial ETA application.* Any request for extension of ETA, not conforming to the rules in paragraph (e)(4)(i) of this section shall be made by filing an original and two (2) copies of form OCCA-19 and shall be accompanied by the fee set forth in 49 CFR 1002.2(f)(10). These requests shall be filed at the appropriate Regional Office prior to the second working day before the expiration date of the ETA sought to be extended. Any request for continuation of service authorized by the issuance of ETA not filed prior to the second day shall be filed on form OCCA-95 as a separate application. Each extension may be granted for a period of up to 30 days. Extensions of ETA are discretionary with the Commission, and if multiple requests for extensions are filed, the Commission may require applicant to file a TA application.

(iii) *Passenger carrier ETA applications.* If an applicant for ETA as a motor carrier of passengers certifies that no other motor carrier of passengers is providing transportation service to the place or in the area to be served, a 30-day grant of ETA may be extended for a period of 180 additional days (instead of 90 additional days), where applicant also complies with the provisions of paragraph (e)(4)(i) of this section. If the Commission should subsequently determine that another motor carrier of passengers was providing such service as of the date of applicant's certification, any extension of the ETA beyond 90 additional days shall be revoked.

[48 FR 51628, Nov. 10, 1983, as amended at 52 FR 46483, Dec. 8, 1987; 54 FR 53643, Dec. 29, 1989; 55 FR 6805, Feb. 27, 1990]

§ 1162.3 Processing of applications.

(a) *Notice to interested persons*—(1) *Service.* Notice of the filing of TA applications shall be given by the publication of a caption summary of the authority sought. Summaries shall be prepared by applicant in accordance with § 1162.2(b). These will be reviewed by the Commission's Regional Office and forwarded to the Office of the Secretary, Washington, DC. No summary will be published or need be submitted in the case of ETA applications.

(2) *Protests to TA applications.* Any person who can and will provide all or any part of the proposed service may file a protest against a TA application. Protests shall be specific as to the service which protestant can and will offer. A signed original and two copies shall be filed with the Regional Office named with the caption summary within 15 calendar days after publication. The envelope containing the protest shall be clearly marked "TA Protest." One copy of a protest shall be served simultaneously on the applicant (or its authorized representative, if any) by U.S. mail or in person.

(3) *Protests to ETA applications.* Since caption summaries are not published for ETA applications, there is no formal procedure for filing pro-

tests. Any person who can and will provide service may protest an ETA application at any time while the application is pending by telephoning or writing the Regional Office handling the application. Persons seeking to protest an ETA application after an initial decision has been made shall file an appeal under the procedures outlined in § 1162.6(f).

(b) *Publication of rates and charges.* A carrier (except a motor contract carrier of property or a water contract carrier) may not lawfully perform transportation under a grant of TA or ETA until compliance has been made with the rate and other requirements of 49 U.S.C. 10761 and 10762. Such rates may be filed on less than statutory notice under the provisions of § 1162.5 of this part.

(c) *Revocation for noncompliance, and reinstatement and extension of time for making compliance.* (1) Authority is approved subject to compliance within 30 days, or within such additional time as the Commission may approve, with the applicable provisions of the statute and the Commission's regulations governing the filing of rate publications (see paragraph (b) of this section). In addition, authority of motor carriers is approved subject to the filing of acceptable insurance for the protection of the public and designation of agents for service of process (see § 1162.8 of this part).

(2) If compliance is not made within the 30-day period, or within the time allowed in any extension, the decision shall automatically be void. When this occurs, applicant may make written request to the Regional Office of its domicile for reinstatement of the granting decision, provided that: (i) The request is made within 50 days from the date of service of the decision, (ii) good cause can be shown as to why compliance was not made within the time allowed, and (iii) the request for reinstatement contains positive assurance that applicant will comply immediately with all applicable requirements if the decision is reinstated.

(d) *Duration of TA grants.* Although TA operations may not commence until compliance is made with the requirements set forth in paragraph (c) of this section, the statutory 180-day or 270-day duration of such TA shall begin to run upon service of the decision. Successive grants of TA and extensions of TA beyond these statutory limits are governed by the provisions of Part 1163 and § 1162.1(a) of this part.

(e) *Duration of ETA grants.* If a written decision is not served, a grant of ETA shall begin to run upon telephonic notification to applicant of the grant of authority. If applicant is served with a written decision granting authority, the grant shall begin to run upon service of the decision.

[48 FR 51628, Nov. 10, 1983, as amended at 52 FR 4627, Feb. 13, 1987]

§ 1162.4 Determination of applications.

(a) *General.* (1) Initial determination of TA or ETA applications will generally be made by a Regional Motor Carrier Board. Successive grants are limited by the provisions of Part 1163 and § 1162.1(a) of this part.

(2) While a grant of TA or ETA is neither a permit nor a certificate, it nevertheless enables the applicant to provide service either as a common or a contract carrier. Consequently, a contract carrier applicant for TA or ETA must show that the operation proposed is that of a contract carrier as defined in 49 U.S.C. 10102(13). No "dual operation" finding is necessary.

(3) To the extent not otherwise exempt by statute (49 U.S.C. 10526(a)(11)), for administrative convenience, TA or ETA to transport property will authorize the return transportation of shipper-owned trailers (and similar cargo containers) and empty crates, barrels, bottles, hangers, pallets, bracing, dunnage, and other similar containers and shipping devices used in the outbound transportation covered by the TA or ETA.

(b) *Standards for determination.* The following standards shall be used, in the absence of special or unusual circumstances, in the initial or appellate determination under 49 U.S.C. 10928 of applications by motor or water carriers for TA or ETA.

(1) *General.* Grants of TA or ETA shall be made upon the establishment of an immediate need for the transportation of passengers, or of particular

commodities or classes of commodities, from origins to destinations not having carrier service capable of meeting the need. Requests involving service to or from entire States, counties, or other defined areas warrant approval when supported by evidence that there is a need for service to or from a representative number of points in each such State, county, or area, that there is a reasonable certainty that the service will be used, and that carrier service capable of meeting the need is not available. Lack of opposition to a TA application will be considered as strong indicia of unavailable service, and unopposed applications will normally be granted unless the applicant is unfit.

(2) *Immediate need.* A grant of TA or ETA will be made where it is established that there is or soon will be an immediate transportation need which reasonably cannot be met by existing carrier service. A showing of immediate need may involve, among other things, a new or relocated plant, different method of distribution, new or unusual commodities, an origin or destination not now served by carriers, a discontinuance of existing service, failure of existing carriers to provide service, or comparable situations which require new carrier service before an application for permanent authority can be filed and processed.

(3) *Failure to provide equipment.* TA or ETA may be granted where existing authorized carriers are unable or refuse to furnish equipment necessary to move passengers or freight to meet an immediate transportation need.

(4) *General bases for disapproval.* Applications for TA or ETA may be denied for the following reasons:

(i) Failure to meet statutory standards.

(ii) Unfitness of the applicant.

(c) *Determination of fitness issues in motor carrier applications.* The following standards shall be used in the initial or appellate determination of fitness issues in applications by motors carriers for TA or ETA under 49 U.S.C. 10928.

(1) *General.* (i) Unless there is a particularly urgent transportation need, an application will normally be denied where the applicant has been found unfit or in substantial noncompliance with the safety regulations of the Department of Transportation, unless the carrier has reestablished compliance or the application contains sufficient evidence to establish that the carrier has taken significant steps to remedy its deficiencies and is now in substantial compliance.

(ii) Where a fitness proceeding has been instituted against a carrier applicant, or where the Office of Compliance and Consumer Assistance has been ordered to intervene in a pending proceeding because the applicant's fitness is in issue, and no final decision has been entered, and applicant may attempt to show that there is no nexus between issues raised in the pending fitness proceeding and in the application for TA or ETA or that other good cause exists for granting the application.

(iii) Alleged violations of law or regulations or a pending fitness investigation where no formal proceeding has been instituted shall not be used as grounds for a denial unless the decisionmaker has evidence that the carrier applicant has a history of willful or flagrant violation of law. If authority is denied for lack of fitness on this basis, the decision shall state the basis for denial. The applicant shall be afforded opportunity to appeal the denial.

(iv) Any denial under these guidelines shall be without prejudice to the applicant filing an appeal and submitting evidence concerning its fitness or safety compliance as appropriate.

(2) *No presumption of fitness.* The granting of any authority shall not give rise to any presumption regarding the applicant's fitness.

(3) *Revocation for unfitness.* Any grant of authority may be later revoked by the Commission if applicant is determined to be unfit in accordance with these guidelines.

(4) *Urgency considerations.* Allegations of unfitness in these proceedings shall be considered in light of the urgency of the shipper's needs.

§ 1162.5 Rates, fares, charges, and special permission applications.

(a) *TA rate filings.* Rates, fares, charges, and related provisions may be established under the provisions of Special Tariff Authority No. 78-1000-TA upon not less than one day's notice.

(b) *ETA rate filings.* (1) Each application for ETA (except an application seeking authority as a motor contract carrier of property or a water contract carrier) shall be accompanied by a statement of the rates, fares, charges, and other tariff or schedule provisions to become effective if the application is granted. ETA will be revoked for failure to file a proper tariff or schedule.

(2) In every case the carrier shall state in its application whether there is under suspension any rates, fares, or charges published for its account, or whether an application for special permission authority to file its rates, fares, or charges on less than 30-days' notice has been granted or denied, covering the same traffic from and to the same points in connection with another application. If the applicant has rates, fares, or charges, or other tariff matters under suspension, or has received, or been denied special permission to file on less than 30-days' notice any such rates, fares, or charges not yet effective covering the same traffic, the Regional Motor Carrier Board will not recommend approval of the request nor will the ETA be granted.

(3) If applicant has rates, fares, or charges under suspension covering the same traffic, it should file a special permission application as set forth in paragraph (c) of this section, stating that a copy was served upon protestant(s) and requesting less-than-statutory notice authority to cancel the suspended matter and to file rates, fares, or charges or, in the alternative, state that the suspended rates, fares, or charges will be defended and request less-than-statutory notice authority to file rates, fares, or charges to apply during the suspension period and to expire at the end of the suspension period.

(c) *Special permission or special tariff authority applications.* If publication is to be made on less than 30-days' notice by the carrier filing the TA or ETA application and the carrier does not wish to use any outstanding general special permission or special tariff authorities (including Special Tariff Authority No. 78-1000-TA), the application must be accompanied by three copies of a special permission or special tariff authority application, setting forth the proposed rates, fares, charges, and other tariff or schedule provisions clearly and completely. If the proposed provisions consist of rates, fares, and/or charges, all points of origin and destination must be indicated. If authority is sought to establish a rule, the exact wording of the proposed rule must be shown. If relief from existing regulations is sought, the exact form of publication must be shown.

[48 FR 51628, Nov. 10, 1983, as amended at 52 FR 4627, Feb. 13, 1987]

§ 1162.6 Appeals and special procedures.

(a) The proceedings of the Regional Motor Carrier Boards shall be governed by the rules set forth at 49 CFR part 1118, except as otherwise provided in this section.

(b) Appeals and replies filed under this section shall be governed by the Commission's Rules of Practice (49 CFR parts 1100 to 1129), except as otherwise provided in this section.

(c) The original and two copies of every pleading, document, or paper permitted or required to be filed under this section shall be furnished for the use of the Commission. Appeals and replies shall not exceed 30 pages in length, including any index of subject matter, argument, and appendices or other attachments. Pleadings must be served on all known parties of record.

(d) Appeals from decisions acting on TA and ETA applications may be filed by any person. All appeals from decisions of a Regional Motor Carrier Board shall be filed with the Regional Office in which the application was filed. All other appeals shall be filed with the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423. The envelope containing the pleading shall be clearly marked "ETA Petition" or "TA Petition."

(e) *Replies may be filed by any person to these appeals.* If the facts stated in any appeal disclose a need for accelerated action, this action, in the discretion of the Commission, may be taken before expiration of the time allowed for reply. Replies received after accelerated action has been taken on appeals will be treated as appeals of the accelerated action and given corresponding accelerated treatment. All replies to appeals from decisions of a Regional Motor Carrier Board shall be filed with the Regional Office in which the application was filed. All other replies shall be filed with the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423. The envelope containing the reply shall be clearly marked "Reply to ETA Petition" or "Reply to TA Petition".

(f) *Appeals from Regional Motor Carrier Board Decisions.* Except as provided below for matters involving ETA, an appeal of a decision of the Regional Motor Carrier Boards entered under 49 U.S.C. 10928 shall be filed within 20 days after the date of service of the decision. Within 15 days after the filing of the appeal, any person may file and serve a reply. Appeals generally will be decided by the Review Board pursuant to the delegation of authority contained in § 1011.6(e)(5). An applicant seeking reconsideration of a decision concerning ETA must file an appeal within 20 days after it is notified of the decision on the application. Any other interested person seeking reconsideration of a decision granting ETA may file an appeal at any time during the life of the authority. Replies must be filed within 15 days after the filing of the appeal.

(g) *Appeals from appellate decisions entered under 49 U.S.C. 10928.*

(1) A person shall not be permitted as a matter of right to file an administrative appeal from an appellate decision entered under 49 U.S.C. 10928. The appellate decision shall be administratively final. This does not apply to a person seeking to appeal a decision granting ETA until such person has been a party to an appellate decision. In these instances, the proceeding shall be reopened to consider the pleading of that person.

(2) Discretionary review—petitions for administrative review. Any party may file a petition for discretionary administrative review of an appellate action. The petition will be granted in the sole discretion of the Commission. Petitions shall be filed within 20 days after the date of service of the appellate decision. Replies shall be filed within 15 days of the date the appeal is filed. The petition should state in detail the respect in which the proceeding involves material error, new evidence, or substantially changed circumstances.

(h) *Final action.* The filing of an appeal does not have the effect of automatically staying the decision being appealed. If the decision grants authority, applicant may conduct the operations authorized upon compliance with tariffs, insurance, and other requirements for the duration of the authority, or until otherwise ordered. If the decision denies authority, applicant may not commence such operations. If the decision revokes authority, applicant must cease such operations. See also § 1162.2(e)(4)(i) of this title.

(i) *Stays.* The Commission may stay the effect of any TA or ETA decision on its own motion. However, the Commission will not accept for filing any pleadings requesting that it stay the effect of any TA or ETA decision.

(j) *Furnishing a copy of the application package to interested persons.* Applicant's representative shall furnish a copy of the application package to interested persons upon request. The request shall be made in writing to applicant's representative and shall contain a check or money order for $10, payable to applicant's representative. Applicant's representative need not supply copies to any person not sending the appropriate payment. Applicant's representative shall mail the copy within 3 days of receipt of the request. Noncompliance with this rule may result in dismissal of the application. Representatives of applicants and potential protestants are urged to communicate by telephone if problems occur in the furnishing of the application.

[48 FR 51628, Nov. 10, 1983, as amended at 52 FR 30166, Aug. 13, 1987]

§ 1162.7 State registration of temporary authorities—motor carriers.

Notwithstanding the provisions of § 1023.11, a motor carrier shall not be required to file with a State commission a TA or ETA having a duration of 120 consecutive days or less if such carrier has:

(a) Registered its other authority granted by the Commission authorizing operation in or through the involved State (a carrier possessing no other such authority may qualify for this exception upon compliance only with paragraph (b) of this section) and identified its vehicles or driveaway operation under the provisions of those standards set forth at §§ 1023.31—1023.42, both inclusive; and

(b) Furnished to the State commission a telegram or other written communication from the motor carrier describing the TA or ETA and stating that operations shall be in full accord with the requirements of standards set forth at § 1023.1 et seq.

§ 1162.8 Insurance and service of process—motor carriers.

(a) Where the applicant is an authorized motor carrier, a statement shall accompany the application indicating whether evidence of effective insurance is on file with the Commission and whether agents for service of process have been designated for each State in which operations will be conducted. If applicant is not an authorized motor carrier, it shall furnish a statement containing the name of its insurance company, its policy number, the effective and expiration dates of the policy, the limits of the policy, and a copy of the Commission's Form BOC 3 designating an agent for service of process in each State where operations will be conducted.

(b) On motor carrier ETA where time does not permit the submission of the required written statement by applicant, a telegraphic statement may be accepted.

PART 1163—TEMPORARY OPERATING AUTHORITIES AND APPROVALS

Sec.
1163.1 Extension of temporary operating authority or approval.
1163.2 Definitions and interpretations.
1163.3 Additional grant for new need.
1163.4 Termination of temporary authority or approval.

AUTHORITY: 49 U.S.C. 10321, 5 U.S.C. 558; 559.

SOURCE: 48 FR 51632, Nov. 10, 1983, unless otherwise noted.

§ 1163.1 Extension of temporary operating authority or approval.

(a) When an applicant has made a timely and sufficient application for a renewal of or new permanent operating authority or approval in accordance with applicable Commission rules, and the application or approval pertains to a need of a continuing nature:

(1) Any corresponding temporary authority (but not emergency temporary authority) granted under 49 U.S.C. 10928 is continued in force, beyond the expiration date specified in the authority, until a final determination is made of the related permanent application.

(2) Any temporary approval granted under 49 U.S.C. 11349 is continued in force, beyond the expiration date specified in such temporary approval, until the final determination of the related application for approval of a consolidation or merger of the properties of two or more motor or water carriers or of a purchase, lease, or contract to operate the properties of one or more carriers.

§ 1163.2 Definitions and interpretations.

The following definitions apply to Part 1163:

(a) *Timely application.* An application for a certificate of public convenience and necessity filed in accordance with the applicable laws, regulations, and instructions, not later than 60 days after issuance of temporary authority for a period of 180 days to a water carrier, or not later than 60 days after issuance of temporary authority for a period of 270 days to a motor carrier. An applicant may file a petition to waive the timely filing requirement with the Regional Office. Where an applicant has demonstrated good cause, the Regional Motor Carrier Board may extend the time in which a permanent application may be filed under these rules.

(b) *Sufficient application.* An application for permanent operating authority which is in the form, contains the information, and is accompanied by the documents and exhibits required by the applicable laws, regulations, and instructions.

(c) *Need of a continuing nature.* Any need which is the basis of an operation authorized by temporary authority or approval to be conducted for a period of less than an aggregate of 180 days in the case of a water carrier, or less than 270 days in the case of a motor carrier, is presumed not to be of a continuing nature unless the Commission otherwise expressly determines.

(d) *Final determination of the related application.* For the purpose of this section—

(1) An application for permanent operating authority shall be considered to be "finally determined": (i) With respect to operations for which the application is denied, upon the expiration of the period allowed by the regulations of the Commission or by the decision (whichever is greater) within which appeals may be filed; or, if an appeal is filed, upon the denial of the appeal; and

(ii) with respect to operations for which the authority is granted, when the certificate or permit becomes effective.

(2) An application for approval of a consolidation or merger of the properties of two or more motor or water carriers, or of a purchase of the properties of one or more such carriers shall be considered to be "finally determined":

(i) In the case of denial of such an application, upon the expiration of the period allowed by the regulations of the Commission or by the decision (whichever is greater) within which appeals may be filed; or, if an appeal is filed, upon the denial of the appeal; and

(ii) In the case of approval of such an application, when the certificate or permit to be transferred in connection with such application has been reissued in the name of the transferee and has become effective.

(3) An application for approval of a lease or contract to operate the properties of one or more motor or water carriers shall be considered to be "finally determined":

(i) In the case of denial of such an application, upon the expiration of the period allowed by the regulations of the Commission or by the decision (whichever is greater) within which an appeal may be filed; or, if an appeal is filed, upon the denial of the appeal, and

(ii) In the case of approval of such an application, when the decision approving such application becomes effective.

(e) *Temporary authority.* Except where otherwise noted, as used in this part the term "temporary authority" excludes "emergency temporary authority."

§ 1163.3 Additional grant for new need.

As used in 49 U.S.C. 10928(a), the term "not more than 180 days" means the total number of days of temporary authority which may be granted to a water carrier under the provisions of that section to meet a continuing need for a particular service. As used in 49 U.S.C. 10928(b)(1) the term "not more than 270 days" means the total number of days of temporary authority which may be granted to a motor carrier under the provisions of that section to meet a continuing need for a particular service. If the need for a particular service ceases and the temporary authority covering such need expires or is revoked, and a new or separate need arises subsequent to such expiration or revocation, additional temporary authority may be granted to the same carrier for the service notwithstanding the prior grant or grants. However, an application or series of applications filed by a water carrier seeking temporary authority resulting in an aggregate grant exceeding 180 days and an application or series of applications filed by a motor carrier seeking temporary authority resulting in an aggregate grant exceeding 270 days will be denied unless the facts clearly show that the application is based on a new need and not on a continuation of the need on which the prior grant of authority was based. Any corresponding temporary authority may be based on the same need as the underlying emergency temporary authority.

§ 1163.4 Termination of temporary authority or approval.

Nothing in this part shall be construed as preventing the Commission from terminating at any time, in accordance with applicable law and regulations, any temporary or emergency temporary authority or approval, or any extension of these.

PART 1164—OWNER-OPERATOR FOOD TRANSPORTATION

Sec.
1164.1 Governing legislation.
1164.2 Definition of owner.
1164.3 Emergency situations.
1164.4 Annual reporting requirement.

AUTHORITY: 49 U.S.C. 10321, 10922(b)(4)(E), 10923(b)(5)(A), and 11145 and 5 U.S.C. 559.

SOURCE: 46 FR 19498, Mar. 31, 1981, unless otherwise noted. Redesignated at 47 FR 49590, Nov. 1, 1982.

§ 1164.1 Governing legislation.

Under 49 U.S.C. 10922(b)(4)(E) an owner-operator can obtain a certificate, and under 49 U.S.C. 10923(b)(5)(A) an owner-operator can obtain a permit, to transport food and other edible products and byproducts intended for human consumption (except alcoholic beverages and drugs) agricultural limestone and fertilizers and other soil conditioners, through a fitness only application procedure. Transportation under those provisions must be provided by the owner in his or her own vehicle (except in emergency situations), and can only be provided to transport a total tonnage equal to the amount the owner-operator transports of exempt commodities under 49 U.S.C. 10526(a)(6). Owner-operators must certify, on an annual basis, that they are in compliance with the 50-percent tonnage requirement stated above.

§ 1164.2 Definition of owner.

For purposes of this section, any person with an ownership interest of 10-percent or greater in the motor vehicle used to provide regulated transportation under 49 U.S.C. 10922(b)(4)(E) or 49 U.S.C. 10923(b)(5)(A) shall be considered an owner of the vehicle. Any owner is eligible to operate the vehicle to provide transportation services under those provisions.

§ 1164.3 Emergency situations.

For purposes of this section, emergencies shall include those situations where the need for a substitute driver cannot be anticipated by the owner-operator. Considered under this definition would be situations where the owner-operator is incapable of operating the vehicle due to illness, unanticipated personal or family difficulties demanding personal attention, or other unexpected operating conditions beyond the control of the owner-operator which prevent the owner from operating the vehicle. Planned vacations, off-duty hours for the driver required by safety regulations or other nondriving periods scheduled or mandated by law shall not be considered as emergency situations.

§ 1164.4 Annual reporting requirement.

Each owner-operator providing transportation under certificates to which the provisions of 49 U.S.C. 10922(b)(4)(E) apply, and permits to which the provisions of 49 U.S.C. 10923(b)(5)(A) apply, shall complete Report Form OCCA-143 on or before March 31 of each year for operations conducted during the prior calendar year to certify compliance with the requirement that annual tonnage transported under these provisions does not exceed the annual tonnage transported of exempt commodities under 49 U.S.C. 10526(a)(6).

INTERSTATE COMMERCE COMMISSION OWNER-OPERATOR ANNUAL REPORT FORM

(Attach address label here) ————

Owner-operator name and address, if different than shown.

MC-Number ————

Period covered—if this report is for less than an entire calendar year, report date operations cover.

From (month and date) ————

To (month and date) ————

CERTIFICATIONS

(1) I certify that I am in compliance with the provisions of 49 U.S.C. 10922(b)(4)(E) (for common carriers) or 49 U.S.C. 10923(b)(5)(A) (for contract carriers), in that the tonnage transported under the certificate or permit for the period covered by this report did not exceed the exempt tonnage transported.

(2) I certify that this report was prepared by me or under my supervision, and that I have examined it and that the items reported on the basis of my knowledge and belief are correctly reported.

Signature ————

Date ————

Address (Street, City, State, Zip Code) ————

Telephone Number ————

NOTE: Failure to file this report may subject owner-operator to proceedings leading to revocation of operating authority. This report must be filed by March 31 of each year with Interstate Commerce Commission, Washington, DC 20423.

(49 U.S.C. 10922(b)(4)(E), 10923(b)(5)(A), 11145(c); 5 U.S.C. 553)

[49 FR 4383, Feb. 6, 1984]

PART 1166—EXTENSION OF OPERATIONS BY WATER COMMON CARRIER

Sec.
1166.1 Applicability.
1166.2 Issuance of a certificate without proof of public convenience and necessity.
1166.3 Conditions and procedures.

AUTHORITY: 49 U.S.C. 10321 and 10922; 5 U.S.C. 559.

SOURCE: 47 FR 49590, Nov. 1, 1982, unless otherwise noted.

§ 1166.1 Applicability.

The rules in this part provide special procedures by which water common carriers subject to the Commission's jurisdiction under subchapter III of chapter 105 of title 49 of the United States Code operating over a given waterway may extend their operations over newly completed sections of that waterway as they are opened to navigation. These rules implement 49 U.S.C. 10922(f)(3)(B).

§ 1166.2 Issuance of a certificate without proof of public convenience and necessity.

If a water carrier complies with the conditions and procedures set forth in § 1166.3 of this part, a certificate of public convenience and necessity covering extended operations over a newly opened section of a waterway will be issued without proof of public convenience and necessity.

§ 1166.3 Conditions and procedures.

To obtain a certificate under this part, a water carrier must:

(a) Hold authority to operate over a previously opened portion of the waterway involved;

(b) Institute service over the newly completed portion of the waterway within 120 days after it is opened to navigation; and

(c) File its application, on Commission form OP-1, not later than the date of the filing of tariffs establishing rates and charges for transportation of passengers or property over the portion of the waterway embraced in the application, and in no event later than the date on which the extended operations are instituted.

PART 1167—COMPENSATED INTERCORPORATE HAULING

Sec.

1167.1 Applicability.
1167.2 Notification.
1167.3 Change in participation.

Authority: 49 U.S.C. 10321 and 10524; 5 U.S.C. 559.

Source: 55 FR 11204, Mar. 27, 1990, unless otherwise noted.

§ 1167.1 Applicability.

Compensated transportation service by a member of a corporate family for other members of the same family (Compensated Intercorporate Hauling or CIH) is exempt from Interstate Commerce Commission regulation if proper notice is given. To qualify for the exemption, the participants must be members of a corporate family in which the parent owns, either directly or indirectly, a 100 percent interest in the subsidiaries. However, no corporation operating chiefly as a for-hire carrier may use an affiliate operating under the exemption of 49 U.S.C. 10524(b) to transport freight tendered to it as a carrier.

§ 1167.2 Notification.

(a) *General requirements.* The corporate parent seeking to initiate CIH must submit a Federal Register notice as follows:

Notice of Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(b) *Affidavit and declaration.* The notice shall include the following affidavit and declaration (which need not be notarized) by a person legally qualified to act for the parent:

I, ———, affirm that ——————— is a corporation which directly or indirectly owns a 100 percent interest in the subsidiaries participating in compensated intercorporate hauling under 49 U.S.C. 10524(b), listed in the attached notice.

I declare under penalty of perjury under the laws of the United States that the foregoing is true.

____

(Signature and date)

(c) *To whom notice sent.* The original and one copy of the notice of intent to engage in CIH shall be sent to the Commission in an envelope marked: "CIH Notice." The Secretary's Office will issue an acknowledgment indicating whether the submission is in order, and giving a projected publication date. CIH operations may commence as soon as the required date. CIH operations may commence as soon as the required notice is placed in the mails or, if hand-delivered, upon receipt at the Commission's office.

(d) *Cover letter requirement.* Where the office that has prepared a notice for a corporate family differs from the one executing the notice, that office shall be identified in a cover letter attached to the tendered notice.

(e) *Miscellaneous.* The filing of a CIH notice does not initiate a proceeding before the Commission. Publication of a notice is a ministerial function and does not indicate Commission investigation or affirmation of the representations appearing in the notice concerning corporate affiliation nor does it create a right of protest.

(f) *Fees.* All required filings shall include the appropriate fee. See 49 CFR part 1002.

§ 1167.3 Change in participation.

(a) If the parent intends that an additional subsidiary participate in CIH, it shall file an updated notice.

(b) Whenever the corporate parent's interest in a subsidiary participating in CIH becomes less than 100 percent, operations under 49 U.S.C. 10524(b) by or for that subsidiary shall be discontinued and the parent shall file an updated notice within 10 days.

(c) Updated notices shall be submitted in the format required by

§ 1167.3(a), and will be published in the FEDERAL REGISTER.

(d) An updated notice need not be filed where an action by a corporate family affects the status of a member participating in CIH, but the scope of the operations remains unchanged—*e.g.*, absorption of a subsidiary into a parent resulting in extinction of its separate corporate status. However, name changes require an updated notice.

PART 1169—PREEMPTION OF STATE JURISDICTION: PASSENGER EXIT

Sec.
1169.1 Applicability.
1169.2 Petition.
1169.3 Objections.
1169.4 Commission action.
1169.5 Offers of subsidies; continuation of service.

AUTHORITY: 49 U.S.C. 10321 and 10935; 5 U.S.C. 553.

SOURCE: 55 FR 11205, Mar. 27, 1990, unless otherwise noted.

§ 1169.1 Applicability.

These rules govern petitions by motor passenger common carriers to discontinue regular-route service over any route to any points in a State, or to reduce the level of service over a route to less than one trip per day (excluding Saturdays and Sundays). (Commission preemption of State jurisdiction over passenger rates is covered at 49 CFR part 1143.)

§ 1169.2 Petition.

The petition shall contain the following information:

(a) On a cover page:

(1) Petitioner's name, "MC" number, and mailing address;

(2) The words "Exit Petition:", followed by the affected State (a separate petition must be filed for each such State); and

(3) The termini of the route(s) on which petitioner proposes to discontinue or reduce service.

(b) Verified statement(s) containing the following information:

(1) Description of petitioner's pertinent operations and how they would be affected by the proposed discontinuance or reduction in service (petitioner must hold both interstate and intrastate authorities over the route(s); copies of such authorities, showing service dates, must be attached);

(2) Certification that petitioner requested the State's approval for the proposed discontinuance or reduction in service (indicating the date of such request), and the State either failed to act within 120 days or denied all or part of the request (a copy of the State decision must be attached); the petition shall be filed within 90 days after the final State action or inaction;

(3) Certification that petitioner is not owned or controlled by a State or local government;

(4) Annual interstate and intrastate passenger and package express revenues generated by the service to be discontinued or reduced (but *not* including revenues which petitioner expects to receive in connection with other services which it will still operate), with an explanation of how the revenues were calculated and of any assumptions underlying the calculation;

(5) Description of the rates and pricing practices applicable to the affected service;

(6) Variable cost of operating the affected service, with an explanation of how the costs were calculated, and of any assumptions underlying the calculation (assumptions should be consistent with those used to estimate revenue);

(7) Description of any current operating subsidies or financial assistance applicable to the affected service, and of any proposals or discussions concerning operating subsidies or financial assistance during the year preceding the filing of the petition; and

(8) Description of other passenger transportation available on the affected route(s).

(c) If petitioner proposes to discontinue service, a request for revocation of its pertinent interstate authority; and

(d) Certification that copies of the petition have been served on:

(1) The Governor of the State in which the transportation is provided;

(2) The appropriate State regulatory body;

(3) Local governments in the affected areas; and

(4) Each party to any related State proceedings.

§ 1169.3 Objections.

(a) The Commission must receive an objection within 20 days after the petition is filed.

(b) The objection must contain at least the following information:

(1) Description of any operating subsidies or financial assistance known to have been offered petitioner to continue the involved service;

(2) Description of the adverse effect the proposed discontinuance or reduction in service would have on the traveling public, on the communities served, or on others; and

(3) Analysis of the interstate and intrastate revenues derived from the service, the pricing practices applied to the service, and the variable costs of operating the service.

(c) Within 15 days after an objection is filed, petitioner must furnish to the Commission and to each objector an estimate of, and data necessary to determine the amount of, any annual subsidy or financial assistance required to continue the service. At the same time, petitioner may file rebuttal.

§ 1169.4 Commission action.

The Commission must take final action on a petition within 90 days after it is filed. The 90-day period will not begin to run until the petition is complete. If no objections are received within 20 days after a complete petition is filed, the Commission will grant the petition and revoke any pertinent interstate authority. The effective date will be 30 days after the decision is served. If timely objections are filed, the Commission will consider the evidence on the written record. There will be no oral hearing. Appeals are governed by 49 CFR 1115.3(b).

§ 1169.5 Offers of subsidies; continuation of service.

(a) Any financially responsible person who intends to offer petitioner an operating subsidy or financial assistance so it may continue providing the service, must notify the Commission and petitioner within 50 days after the petition is filed.

(b) The Commission may order petitioner to continue the affected service for 165 days after the petition is filed—even if permission to discontinue or reduce service is otherwise granted, but before it has become effective—if there is a responsible offer of subsidy or financial assistance that is reasonably likely to induce petitioner to continue the service voluntarily, or if additional time is needed to allow another carrier to take over the involved operations.

PART 1170—EMPLOYEE PROTECTION FOR MOTOR PASSENGER CARRIERS

Sec.

1170.1 Applicability.
1170.2 Application.
1170.3 Opposition.
1170.4 Commission action.
1170.5 List of available jobs.

AUTHORITY: 49 U.S.C. 10321; 5 U.S.C. 553; and Pub. L. 97-261, sec. 27.

SOURCE: 55 FR 11206, Mar. 27, 1990, unless otherwise noted.

§ 1170.1 Applicability.

Section 27 of the Bus Regulatory Reform Act of 1982 is designed to protect employees of bus companies who lose their jobs because of reduction or discontinuance of regular-route bus service. These rules govern applications under section 27 by individuals seeking a determination of eligibility for protection. To be eligible for protection in the form of priority in seeking reemployment, the individual must have worked for a bus company on or before September 20, 1980, and have been fired after September 20, 1982 because of a reduction or discontinuance of regular-route bus operations. Furloughed personnel who have a right of recall by their employer are not eligible.

§ 1170.2 Application.

(a) The application shall contain the following information:

(1) The caption "Bus Employment Protection Application", at the top of page one;

(2) The individual's name and address;

(3) The full name and "MC" number of the carrier by whom the individual was employed;

(4) The dates on which the individual's employment with that carrier began and terminated;

(5) The reason(s) for the termination;

(6) The specific discontinuance or reduction of service that caused the termination; and

(7) The individual's occupational specialty.

(b) The lower left corner of the envelope should be marked: "Bus Employment Protection Application:", followed by applicant's full name. (If there is more than one applicant, list only one name and indicate the number of others.)

(c) A copy of the application must be sent to the carrier by whom the individual was employed.

§ 1170.3 Opposition.

(a) Any interested person may contest the application within 20 days after its filing.

(b) A letter or other written statement contesting an application shall include evidence showing that discontinuance or reduction in service was not a contributing factor to the termination of applicant's employment, and/or that the applicant or the circumstances are not covered by the statutory criteria.

(c) The lower left corner of the envelope should be marked: "Bus Employment Protection Opposition:", followed by the applicant's name as prescribed at § 1170.2(b).

(d) Applicant may reply to any opposition within 15 days after it is filed. A motion must be filed within 15 days after the pleading it addresses is filed.

§ 1170.4 Commission action.

A decision disposing of an unopposed application will be served within 30 days after the application is filed. If the application is contested, a decision will be served within 60 days after the application is filed. Appeals are governed by 49 CFR 1115.2.

§ 1170.5 List of available jobs.

(a) Every carrier having annual gross revenues of over $3,000,000 derived from motor passenger common carrier operations shall, and any other motor passenger common carrier may, furnish to any Commission regional office a monthly list of available jobs, unless the carrier has no new job openings. The list must include a job description, job location, and the skills required for each available position.

(b) The Commission will publish and make available at all its offices a comprehensive list of available jobs, entitled *Jobs Available From Class I Motor Passenger Carriers*. A copy of the list will be mailed to each applicant, and to each eligible individual for 6 months following the Commission's determination of his eligibility, subject to renewal at his request. Additional copies will be available by paid subscription. Information may be obtained from the Office of the Secretary, room 2221, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

PART 1171—RULES GOVERNING APPLICATIONS FOR CERTIFICATES OF REGISTRATION BY FOREIGN MOTOR CARRIERS AND FOREIGN MOTOR PRIVATE CARRIERS UNDER 49 U.S.C. 10530

Sec.
1171.1 Controlling legislation.
1171.2 Definitions.
1171.3 Procedure used generally.
1171.4 Information on Form OP-2.
1171.5 Where to send the application.
1171.6 Commission review of the application.
1171.7 Appeals.

AUTHORITY: 49 U.S.C. 10922 and 10530, 5 U.S.C. 553.

§ 1171.1 Controlling legislation.

(a) These rules govern applications filed under 49 U.S.C. 10530. Under this section certain foreign motor carriers and motor private carriers must hold a certificate of registration to provide certain interstate transportation services otherwise outside the jurisdiction of the Commission. Neither a foreign motor carrier nor a foreign motor private carrier may provide interstate transportation of property unless the Commission has issued the carrier a certificate of registration. The service allowable under a certificate of registration is described in 49 U.S.C. 10922(1)(2)(B).

(b) These rules apply only to carriers of a contiguous foreign country with respect to which a moratorium is in effect under 49 U.S.C. 10922(l)(1).

[50 FR 20773, May 20, 1985, as amended at 54 FR 42958, Oct. 19, 1989]

§ 1171.2 Definitions.

(a) *The Act.* The Truck and Bus Safety and Regulatory Reform Act of 1988.

(b) *Foreign motor carrier.* A person transporting the goods of others for hire (including a motor carrier of property):

(1) Which does not hold a certificate or permit issued under 49 U.S.C. 10922 or 10923;

(2) Which is domiciled in any contiguous foreign country, or is owned or controlled by persons of any contiguous foreign country, and is not domiciled in the United States; and

(3) In the case of a person which is not a motor carrier of property, which provides interstate transportation of property under an agreement or contract with a motor carrier of property (except a motor carrier described in (b)(2) of this section).

(c) *Foreign motor private carrier.* A person transporting its own goods (including a motor private carrier):

(1) Which is domiciled in any contiguous foreign country;

(2) Which is owned or controlled by persons of any contiguous foreign country, and is not domiciled in the United States; and

(3) In the case of a person which is not a motor private carrier which provided interstate transportation of property by motor vehicle under an agreement or contract entered into with a person (other than a motor private carrier described in (c) (1) and (2) of this section).

(d) *Exempt items.* Commodities described in detail at or transported under 49 U.S.C. 10526(a)(4), (5), (6), (11), (12), (13), and (15).

(e) *Interstate transportation.* Transportation described at 49 U.S.C. 10521, and transportation in the United States otherwise exempt from the Commission's jurisdiction under 49 U.S.C. 10526(b)(1).

(f) *Fit, willing, and able.* Safety fitness and proof of minimum financial responsibility as defined in 49 U.S.C. 10530(e).

(g) *Motor vehicle taxes.* Taxes imposed under 26 U.S.C. 4481.

(h) *Most recent taxable period.* Same as defined in 26 U.S.C. 4482(c).

[50 FR 20773, May 20, 1985, as amended at 54 FR 42959, Oct. 19, 1989]

§ 1171.3 Procedures used generally.

(a) All applicants must file a completed Form OP-2. All required information must be submitted in English on the Form OP-2. The application will be decided based on the submitted Form OP-2 and any attachments. Notice of the authority sought will not be published in either the FEDERAL REGISTER or the *ICC Register.* Protests or comments will not be allowed (except for intervention by the Department of Transportation). There will be no oral hearings.

(b) Under the statute, the carriers covered must have a copy of a valid certificate of registration in any vehicle providing transportation within the scope of the statute.

(c) The Form OP-2 may be obtained at Commission Regional and Field Offices, or by calling the Office of the Secretary at 202-275-7833.

(d) Applicants must concurrently serve a copy of their completed applications on the United States Department of Transportation, Federal Highway Administration, Office of Motor Carriers (DOT). DOT may intervene in any proceeding on the issue of safety fitness by filing an appropriate pleading detailing its reasons for opposing a grant of authority. The pleading must be filed within 20 days of receiving a copy of the application. Applicant may respond to any such pleading within 20 days of its filing.

[50 FR 20773, May 20, 1985, as amended at 54 FR 42959, Oct. 19, 1989]

§ 1171.4 Information on Form OP-2.

(a) Applicants must furnish all information required on Form OP-2 by completing all spaces on the form and providing any necessary attachments. Failure to do so will result in rejection of the application.

(b) Notarization of the application is not required; however, applicants are subject to applicable Federal penalties for filing false information.

[50 FR 20773, May 20, 1985]

§ 1171.5 Where to send the application.

(a) The original and one copy shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, with the filing fee set forth in 49 CFR 1002.2(f)(1). A check or money order for that amount payable to the Interstate Commerce Commission in United States dollars must be submitted.

(b) One copy of the application shall be sent to the Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety, Washington, DC 20590.

[50 FR 20773, May 20, 1985, as amended at 52 FR 46484, Dec. 8, 1987]

§ 1171.6 Commission review of the application.

(a) Commission staff will review the application for correctness, completeness, and adequacy of the evidence.

(1) Minor errors will be corrected without notification to the applicant.

(2) Materially incomplete applications will be rejected.

(b) Except in those proceedings in which the Department of Transportation intervenes under § 1171.3(d), compliance will be determined solely on the basis of the application. An employee review board will decide whether the authority sought falls under the statute, and whether and to what extent the evidence warrants a grant of authority.

(1) If the authority sought does not require a certificate of registration, or if the evidence does not warrant a grant of the authority sought, the employee review board will deny the application in whole or in part. In the case of a full or partial denial of an application, the Commission will inform the applicant by letter setting forth the reasons for the denial.

(2) If the employee board grants all or part of the application, the Commission will issue a certificate of registration authorizing specified operations provided that applicant has demonstrated compliance with 49 CFR 1044 (designation of process agent). If applicant has not complied with this requirement, the Commission will issue a notice stating that a certificate of registration will be issued upon such compliance. No certificate or registration shall be issued prior to compliance.

(c) If the Department of Transportation intervenes under 49 CFR 1171.3(d), the proceeding will be decided by the Commission. If the Commission grants all or part of the application, it will issue a certificate in accordance with the procedure described in 49 CFR 1171.6(b)(2).

[50 FR 20773, May 20, 1985, as amended at 50 FR 40030, Oct. 1, 1985; 54 FR 42959, Oct. 19, 1989; 54 FR 52035, Dec. 20, 1989]

§ 1171.7 Appeals.

A decision disposing of an application subject to these rules is a final action of the Commission. Review of such an action on appeal is governed by the Commission's appeal regulations at § 1115.2.

[50 FR 20773, May 20, 1985]

PARTS 1172–1174—[RESERVED]

PARTS 1175–1199—FINANCE PROCEDURES

PARTS 1175–1179—SECURITIES, SECURITY INTERESTS AND FINANCIAL STRUCTURES

PART 1175—EXEMPT ISSUANCE OF SECURITIES AND ASSUMPTION OF OBLIGATIONS

Sec.
1175.1 Scope of exemption.
1175.2 Procedures and relevant dates.

AUTHORITY: 49 U.S.C. 10321, 10505, 11301; 5 U.S.C. 553.

§ 1175.1 Scope of exemption.

(a) Subject to the exception in paragraph (b) of this section, the issuance of securities and/or the assumption of liabilities are exempt from the requirements of 49 U.S.C. 11301 when issued or assumed by:

(1) Class II and III rail carriers;

(2) A party acquiring a rail line in a proceeding under 49 U.S.C. 10905; and

(3) Any rail carrier, regardless of size, issuing equipment trust certificates. For these types of transactions, no filing with the Commission is needed. The issuance of securities and/or the assumption of liabilities by Class I railroads and their holding companies are also exempt from the requirements of 49 U.S.C. 11301, subject to the requirements of § 1175.2 and further subject to the exception in paragraph (b) of this section.

(b) The exemption in paragraph (a) of this section does not apply to those securities that are directly related to applications filed under 49 U.S.C. 10901 and 11344. However, since the information is readily available in the primary application filed under 49 U.S.C. 10901 and 11344 in those proceedings, there is no need to file that information separately in an application under 49 U.S.C. 11301.

(c) This exemption does not affect the competitive bidding requirements of section 10 of the Clayton Act (15 U.S.C. 20), as implemented in part by 49 CFR part 1010.

[51 FR 4928, Feb. 10, 1986]

§ 1175.2 Procedures and relevant dates.

(a) To qualify for this exemption, Class I railroads and their holding companies, when issuing rail-related securities, must file a verified notice of exemption and serve it in accordance with 49 U.S.C. 11301(d)(2). A Class I railroad or its holding company may file a notice for each security issuance, or an annual notice, with updates as needed, for all securities proposed to be issued during the upcoming two years. If the annual notice procedure is used, the exemption will expire for all securities not issued within two years of filing. The notice must identify the carrier or holding company, describe the security and the purpose of the issuance or assumption, and certify that it has been served on the chief executive of the States in which the carrier operates.

(b)(1) If no opposition is filed with the Commission and served on the carrier within 15 days of the filing of either the individual or annual notice, or any update, the transaction is exempt without further action by the Commission.

(2) If protests are received, the Commission will issue a decision on whether the proposal will be investigated within 30 days of the filing of the notice, and the procedure to be followed. A decision not to investigate will allow the transaction to go forward under the exemption in § 1175.1.

[51 FR 4928, Feb. 10, 1986]

PART 1176—[RESERVED]

PART 1177—RECORDATION OF DOCUMENTS

Sec.
1177.1 Definitions and classifications of documents.
1177.2 To whom documents should be submitted for recordation.
1177.3 Requirements for submission.
1177.4 Sample forms.
1177.5 Administrative procedure.

AUTHORITY: 49 U.S.C. 10321 and 11303; 5 U.S.C. 559.

SOURCE: 46 FR 54946, Nov. 5, 1981, unless otherwise noted. Redesignated at 47 FR 49592, Nov. 1, 1982.

§ 1177.1 Definitions and classifications of documents.

(a) A "primary document" is a mortgage (excluding those under the Ship Mortgage Act of 1920, as amended—46 U.S.C. et seq.), lease, equipment trust agreement, conditional sales agreement, assignment of a lease or leases which have not previously been filed, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of one or more vessels operated subject to Interstate Commerce Commission jurisdiction, railroad cars, locomotives, or other rolling stock for a use related to interstate commerce.

(b) A "secondary document" is any assignment of rights or interest, supplement, or amendment to any primary or other secondary document. These include releases, discharges, or satisfactions, either total or partial.

§ 1177.2 To whom documents should be submitted for recordation.

Documents to be recorded shall be submitted in person or by mail addressed to the Secretary, Interstate Commerce Commission, Washington, DC 20423. All documents submitted by mail should clearly state "Documents for Recordation" on the envelope.

§ 1177.3 Requirements for submission.

In order to be accepted for recordation, an original of any primary or secondary document must:

(a) Be in writing and executed by the parties to the document, and acknowledged or verified either in a form:

(1) Authorized by the law of the state, territory, district or possession where executed for the acknowledgement or verification of deeds of land *or*

(2) Substantially as follows:

INDIVIDUAL FORM OF ACKNOWLEDGEMENT

State of ————

County of ————, ss:

On this ———— day of ———, 19—, before me, personally appeared (name of signor), to me known to be the person described in and who executed the foregoing instrument and (s)he acknowledged that (s)he executed the same as his/her free act and deed.

[Seal]

____

Signature of notary public

My commission expires ————

Corporate Form of Acknowledgement

State of ————

County of ———— ss:

On this ———— day of ———, 19— before me personally appeared, (name of signor), to me personally known, who being by me duly sworn, says that (s)he is the (title of office) of (name of corporation), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Seal]

____

Signature of notary public

My Commission expires ————

(b) Be accompanied by at least one fully executed and acknowledged or verified counterpart, or if no counterpart has been executed and acknowledged by the parties, one certified true copy. A certified true copy of an original document is a complete and identical copy in all respects to the original, attached with a certificate executed by a notary public, stating that he or she has compared the copy with the original and has found the copy to be complete and identical in all respects to the original document. Alternatively, there may be attached to the copy affidavits, wherein the affiant states that he or she has compared the copy with the original document and found the copy to be complete and identical in all respects to the original documents.

(c) Be accompanied by the fee set forth in 49 CFR 1002.2(f)(84). However, assignments which are executed prior to the filing of the primary document and which are submitted concurrently will be treated along with the primary document as one for fee purposes and will be assessed only one fee.

A lease and agreement (Philadelphia Plan) shall be similarly treated.

(d) Be accompanied by a letter of transmittal requesting the recording of the document. For a sample of a letter, see § 1177.4 Documents submitted concurrently under the same recordation number may be included in a single transmittal letter. Otherwise, each document must have its own letter of transmittal. The letter should be addressed to the Secretary and include the following information:

(1) *Type of Agreement.* (equipment trust, mortgage, assignment, etc.).

(2) *Whether document is a primary document or a secondary document* (see § 1177.1). If the document is a secondary document, it must contain the recordation number of the primary document to which it is connected, unless it is being filed concurrently with a primary document to which a recordation number has not yet been assigned.

(3) *A request for cross-indexing.* If the document is an assignment, parties may request the listing of the assignment in the index under the name(s) of parties with continuing interest not involved in this particular assignment.

(4) *A description of the equipment covered in the document*—(i) *For railway equipment*—The type of equipment; whether locomotives, cars, or other rolling stock; with any A.A.R. mechanical designation; the number of each type; any identifying marks such as the name or initials of the lessee, mortgagee, or vendee, and the road or serial number, or if more than one for each type of equipment, the first and last inclusive numbers.

(ii) *For water carrier equipment*—Whether tow boats, barges or other vessels; type of equipment; description as contained in the United States Coast Guard certificate of enrollment; number of each type of equipment; and any identifying marks such as the name or initial of the lessee, mortgagee, or vendee.

(5) Parties to the agreement, as follows:

(i) Conditional sale-vendor, purchaser, guarantor.

(ii) Mortgage—mortgagor, mortgagee, guarantor.

(iii) Equipment Trust—vendor, trustee, lessor, lessee, guarantor of lease.

(iv) Lease—lessee, lessor, guarantor.

(v) Bailment—bailor, bailee, guarantor.

(vi) Other transactions—principal debtor, trustee, guarantor, and other parties.

(6) Parties to whom original document should be returned.

(7) The amount of the enclosed fee.

(8) A short summary (1 or 2 sentences) of the type of document and a very brief description of the equipment and identifying numbers. This summary will be entered into the index as an aid to researching the encumbrances to title. (For a sample of a summary, see § 1177.4).

(9) The letter must be signed by an executive officer of one of the parties having knowledge of the matters described in the letter, or their attorney or representative in fact.

NOTE: If the document is a mortgage or deed of trust which contains a "hereafter acquired" or similar clause, the following statement may be included in the letter of transmittal in lieu of the equipment description above:

"Included in the property covered by the aforesaid mortgage (or deed of trust) are (here identify generally the equipment such as "barges, tow boats, or other vessels, railroad cars, locomotives and other rolling stock") intended for use related to interstate commerce, or interests therein, owned by (name of mortgagor) at the date of said mortgage or thereafter acquired by it or its successors as owners of the water carriers or the lines of railway covered by the mortgage."

When such a mortgage or deed of trust is filed, it is not necessary to refile the document whenever additional rolling stock is acquired in order to perfect the lien of the document upon the addition of vessels or rolling stock.

(5 U.S.C. 553, 31 U.S.C. 9701; 49 U.S.C. 10321)

[46 FR 54946, Nov. 5, 1981. Redesignated at 47 FR 49592, Nov. 1, 1982 and amended at 52 FR 46484, Dec. 8, 1987]

§ 1177.4 Sample forms.

(a) Sample short summary for the Index.

(1) *Primary documents.* [Type of document] between [name and address of lessor, mortgagor, bailor, etc.] and [name and address of lessee, mortgagee, bailee, etc.] dated [date], and covering [briefly list amount and types of equipment].

(2) *Secondary documents.* (i) If an assignment—Assignment between [name and address of assignor] and [name and address of assignee] dated [date of assignment] and covering [list amount and types of equipment], and connected to [type of document primary document is] with Recordation No. [recordation number of the primary document if known, at time recorded].

(ii) Other secondary documents—[Type of document] to [type of primary document] with Recordation No. [Recordation number of the primary document], dated [date of amendment, supplement, release, etc.] and covering [list amount and types of equipment].

(b) *Sample Letter of Transmittal.*

[Secretary's Name] *Secretary, Interstate Commerce Commission, Washington, D.C.*

Dear Secretary: I have enclosed an original and one copy/counterpart of the document(s) described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a [mortgage, lease, equipment trust, supplement, etc.], a [primary or secondarv] document, dated [date].

(If a secondary document)—The primary document to which this is connected is recorded under Recordation No. ——.

(If an assignment)—We request that this assignment be cross-indexed.

The names and addresses of the parties to the documents are as follows:

Vendor, Lessor, Mortgagor, etc: [name and address]

Vendee, Lessee, Mortgagee, etc: [name and address].

A description of the equipment covered by the document follows:

[Type of equipment, amount of each, AAR designation if any, identifying marks, road or serial numbers, etc., as outlined in 1177.3(d)(4).]

A fee of ———— is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to [party to whom documents should be returned].

A short summary of the document to appear in the index follows: [a short summary as described in 1177.4(a).).

Very truly yours,

[signature of an executive officer of one of the parties, their attorney, or representative in fact.]

§ 1177.5 Administrative procedure.

(a) At the time of filing of a document with the Commission for recordation, a consecutive number will be stamped upon the original document and upon the copies or the counterparts, with the date and hour of the filing. A notation acknowledging that the document has been filed pursuant to 49 U.S.C. 11303 will be made. The original document, along with the notation, will be returned to the party named in the transmittal letter and a copy or counterpart will be retained by the Commission. For a secondary document, the number assigned will be the recordation number of the primary document plus the next available letter suffix.

(b) The Commission will maintain an index for public use as required by 49 U.S.C 11303(b). There will be an index of parties to documents recorded at the Commission in alphabetical order by the party's name. If requested by the letter of transmittal, this index will also be amended to reflect an assignment under the name of the party other than the assignor or assignee to the document. There will also be an index of documents by number, which will list secondary documents referenced to the primary ones. The indexes will contain the pertinent information furnished by the parties in the transmittal letter.

(c) The Commission cannot judge the validity of documents, nor judge the status of encumbrances to property as reflected by documents recorded at the Commission. The public is welcome to research the records or use an agent or attorney to do so, provided that Commission rules concerning handling of the documents are respected.

(d) The public should note that filing documents with the Commission is discretionary and encumbrances exist which are not on file with the Commission.

PARTS 1178–1179—[RESERVED]

PARTS 1180–1189—COMBINATIONS AND OWNERSHIP

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

Subpart A—General Acquisition Procedures

Sec.
1180.0 Scope and purpose.
1180.1 General policy statement for merger or control of at least two Class I railroads.
1180.2 Types of transactions.
1180.3 Definitions.
1180.4 Procedures.
1180.5 [Reserved]
1180.6 Supporting information.
1180.7 Market analyses.
1180.8 Operational data.
1180.9 Financial information.

Subpart B—Acquisition Procedures for Lines of Railroads in Reorganization

1180.20 Types of transactions.
1180.21 Identifying information.
1180.22 Traffic data.
1180.23 Operational data.
1180.24 Financial information.
1180.25 Procedures.
1180.26 Definitions.

Subpart C—Forced Sale Procedures for Bankrupt Railroad Lines

1180.40 Purpose and scope.
1180.41 Submission and contents of offer.
1180.42 Commission's 15 day determination.
1180.43 Agreement between the parties.
1180.44 Failure to reach an acquisition agreement.
1180.45 Requests to set the terms.
1180.46 Multiple offer proceedings.
1180.47 Transmission of the Commission's prescribed terms to the court.
1180.48 Special provisions concerning these forced sale proceedings.
1180.49 Definitions for Subpart C.

AUTHORITY: 49 U.S.C. 10321, 10505, 10903—10906, 11341, 11343—11346; 5 U.S.C. 553 and 559; 45 U.S.C. 904 and 915.

Subpart A—General Acquisition Procedures

SOURCE: 47 FR 9844, Mar. 8, 1982, unless otherwise noted. Redesignated at 47 FR 49592, Nov. 1, 1982.

§ 1180.0 Scope and purpose.

These regulations set out the information to be filed and the procedures to be followed in control, merger, acquisition, lease, trackage rights, and any other consolidation transaction involving more than one railroad that is initiated under 49 U.S.C. 11343. Section 1180.2 separates these transactions into four types: *Major, significant, minor,* and *exempt.* The informational requirements for these types of transactions differ. Before an application is filed, the designation of type of transaction may be clarified or certain of the information required may be waived upon petition to the Commission. This procedure is explained in § 1180.4. The required contents of an application are set out in §§ 1180.6 (general information supporting the transaction), 1180.7 (competitive and market information), 1180.8 (operational information) and 1180.9 (financial data). *Major* and *significant* applications must contain all of the information required in §§ 1180.6 through 1180.9. The informational requirements for a *minor* application are more limited and are set out in §§ 1180.6 and 1180.8. Procedures (including time limits, filing requirements, participation requirements, and other matters) are contained in § 1180.4. Index I lists all exhibits and indicates the type of application for which the exhibit is required. Index II is a table of contents of this subpart. All applicants must comply with the Commission's Rules of General Applicability, 49 CFR parts 1100-1129, unless otherwise specified. These regulations may be cited as the Railroad Consolidation Procedures.

§ 1180.1 General policy statement for merger or control of at least two Class I railroads.

(a) *General.* The Interstate Commerce Commission encourages private industry initiative that leads to the rationalization of the nation's rail facilities and reduction of its excess capacity. One means of accomplishing these ends is rail consolidation. However, the Commission does not favor consolidations through the exercise of managerial and financial control if the controlling entity does not assume full responsibility for carrying out the controlled carrier's common carrier obligation to provide adequate service upon reasonable demand. Furthermore, the Commission does not favor consolidations that substantially reduce the transport alternatives available to shippers unless there are substantial and demonstrable benefits to the transaction that cannot be achieved in a less anticompetitive fashion. Our analysis of the competitive impacts of a consolidation is especially critical in light of the Congressionally mandated commitment to give railroads greater freedom to price without regulatory interference.

(b) *Consolidation criteria*. The Commission's consideration of the merger or control of at least two class I railroads is governed by the criteria prescribed in 49 U.S.C. 11344 and by the rail transportation policy set forth in 49 U.S.C. 10101a.

(1) Section 11344 directs the Commission to approve consolidations which are consistent with the public interest. In examining a proposed transaction, the Commission must consider, at a minimum:

(i) The effect on the adequacy of transportation to the public;

(ii) The effect of including, or failing to include, other rail carriers in the area involved in the proposed transaction;

(iii) The total fixed charges that would result;

(iv) The interest of affected carrier employees; and

(v) The effect on competition among rail carriers in the affected region.

(2) The Commission must also consider the impact of any transaction on the quality of the human environment and the conservation of energy resources.

(c) *Public interest considerations*. In determining whether a transaction is in the public interest, the Commission performs a balancing test. It weights the potential benefits to applicants and the public against the potential harm to the public. The Commission will consider whether the benefits claimed by applicants could be realized by means other than the proposed consolidation that would result in less potential harm to the public.

(1) *Potential benefits*. Both the consolidated carrier and the public can benefit from a consolidation if the result is a financially sound competitor better able to provide adequate service on demand. This beneficial result can occur if the consolidated carrier is able to realize operating efficiencies and increased marketing opportunities. Since consolidations can lead to a reduction in redundant facilities and thereby to an increase in traffic density on underused lines, operating efficiencies may be realized. Furthermore, consolidations are the only feasible way for rail carriers to enter many new markets other than by contractual arrangement, such as for joint use of rail facilities or run-through trains. In some markets where there is sufficient existing rail capacity the construction of new rail line is prohibitively expensive and does not represent a feasible means of entry into the market.

(2) *Potential harm*. There are two potential results from consolidations which would ill serve the public—reduction of competition and harm to essential services. In analyzing these impacts, we must consider, but are not limited by, the policies embodied in antitrust laws.

(i) *Reduction of competition*. If two carriers serving the same market consolidate, the result would be the elimination of the competition between the two. Even if the consolidating carriers do not serve the same market, there may be a lessening of potential competition in other markets. While the reduction in the number of competitors serving a market is not in itself harmful, a lessening of competition resulting from the elimination of a competitor may be contrary to the public interest. The Commission recognizes that rail carriers face not only intramodal competition, but also intermodal competition from motor and water carriers. The Commission's competitive analysis depends on the relevant market(s). In some markets the Commission's focus will be on the preservation of effective intermodal competition, while in other markets (such as long-haul movements of bulk commodities) effective intramodal competition may also be important.

(ii) *Harm to essential service.* Consolidations often result in shifts of market patterns. Sometimes the carrier losing its share of the market may not be able to withstand the loss of traffic. In assessing the probable impacts, the Commission's concern is the preservation of essential services, not the survival of particular carriers. A service is essential if there is a sufficient public need for the service and adequate alternative transportation is not available.

(d) *Conditions.* (1) The Commission has broad authority to impose conditions on consolidations, including those that might be useful in ameliorating potential anticompetitive effects of a consolidation. However, the Commission recognizes that conditions may lessen the benefits of a consolidation to both the carrier and the public. Therefore, the Commission will not normally impose conditions on a consolidation to protect a carrier unless essential services are affected and the condition: (i) Is shown to be related to the impact of the consolidation; (ii) is designed to enable shippers to receive adequate service; (iii) would not pose unreasonable operating or other problems for the consolidated carrier; and (iv) would not frustrate the ability of the consolidated carrier to obtain the anticipated public benefits. Moreover, the Commission believes that indemnification is ordinarily not an appropriate remedy in consolidation proceedings. Indemnification conditions can be anticompetitive by requiring the consolidated carrier to subsidize carriers who are no longer able to compete efficiently in the marketplace.

(2) As of July 1, 1982, Conditions previously imposed are revoked unless the parties to specific consolidation proceedings demonstrate a public interest in continuing the Conditions in those proceedings.

(e) *Inclusion of other carriers.* The Commission will consider requiring inclusion of another carrier as a condition to approval only where there is no other reasonable alternative for providing essential services, the facilities fit operationally into the new system, and inclusion can be accomplished without endangering the operational or financial success of the new company.

(f) *Labor protection.* The Commission is required to provide applicants' employees affected by a consolidation with adequate protection. Similarly situated employees on the applicants' system should be given equal protection. Therefore, absent a negotiated agreement, the Commission will provide for protection at the level mandated by law (49 U.S.C. 11347), unless it can be shown that because of unusual circumstances more stringent protection is necessary to provide employees with a fair and equitable arrangement. The Commission will review negotiated agreements to assure fair and equitable treatment of affected employees.

(g) *Cumulative impacts and crossover effects.* The Commission recognizes that events can occur during its consideration of a consolidation that can have an effect on various of the concerned parties. However, the Commission is mindful of the need to meet its statutory deadlines and make timely administratively final decisions. Therefore, the Commission will not reopen pending proceedings in order to assess the impact of potential or hypothetical combinations or transactions. The proper forum for considering cumulative impacts and crossover effects is in a later proceeding. In this manner, consideration will be limited to the impacts of transactions which have already been approved and are, therefore, reasonably certain to occur. Furthermore, the Commission will have the benefit of its findings from the prior proceeding to identify more precisely the impacts of that transaction. Proceedings will remain manageable in scope and size, statutory time limits will be met, and all parties will be assured of timely, administratively final decisions.

(h) *Public participation.* To assure a fully developed record on the impacts of a proposed railroad consolidation, the Commission encourages public participation from Federal, State, and local government departments and agencies, affected shippers and carriers, and other interested persons.

[47 FR 9844, Mar. 8, 1982, as amended at 47 FR 11876, Mar. 19, 1982. Redesignated at 47 FR 49592, Nov. 1, 1982]

§ 1180.2 Types of transactions.

Transactions proposed under 49 U.S.C. 11343 involving more than one common carrier by railroad are of four types: *Major, significant, minor,* and *exempt.*

(a) A *major* transaction is a control or merger involving two or more class I railroads.

(b) A *significant* transaction involves at least one class I railroad, acting together with one or more other class I or class II railroads, in a major market extension. It is of regional or national transportation significance as defined in 49 U.S.C. 11345.

(c) A *minor* transaction is one which involves more than one railroad and which is not a *major, significant,* or *exempt* transaction.

(d) A transaction is *exempt* if it is within one of the seven categories described below. The Commission has found that its prior review and approval of these transactions is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a; and is of limited scope or unnecessary to protect shippers from market abuse. See 49 U.S.C. 10505. A notice must be filed to use one of these class exemptions. The procedures are set out in § 1180.4(g). These class exemptions do not relieve a carrier of its statutory obligation to protect the interests of employees. See 49 U.S.C. 10505(g)(2) and 11347. The enumeration of the following categories of transactions as exempt does not preclude a carrier from seeking an exemption of specific transactions not falling into these categories.

(1) Acquisition of a line of railroad which would not constitute a major market extension where the Commission has found that the public convenience and necessity permit abandonment.

(2) Acquisition or continuance in control of a nonconnecting carrier or one of its lines where (i) the railroads would not connect with each other or any railroads in their corporate family, (ii) the acquisition or continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (iii) the transaction does not involve a class I carrier.

(3) Transactions within a corporate family that do not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

(4) Renewal of leases and any other matters where the Commission has previously authorized the transaction, and only an extension in time is involved.

(5) Joint projects involving the relocation of a line of railroad which does not disrupt service to shippers.

(6) Reincorporation in a different State.

(7) Acquisition of trackage rights and renewal of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers that are: (i) based on written agreements, and (ii) not filed or sought in responsive applications in rail consolidation proceedings.

[47 FR 9844, Mar. 8, 1982. Redesignated at 47 FR 49592, Nov. 1, 1982, and amended at 50 FR 15751, Apr. 22, 1985; 51 FR 24669, July 8, 1986]

§ 1180.3 Definitions.

(a) *Applicant.* The parties initiating a transaction. Parties who are considered applicants, but for whom the information normally required of an applicant need *not* be submitted, are (1) in *minor* trackage rights applications, the transferor and (2) in responsive applications, a primary applicant.

(b) *Applicant carriers.* Applicant, *all carriers related to the applicant,* and all other carriers involved in the transaction. This does not include carriers who are involved in an existing trackage rights agreement with applicants.

(c) *Major market extension.* A major market extension is a transaction which may significantly increase competition by extending service into a new market, expanding service in a currently served market when another carrier concurrently contracts its service to that market as part of the same transaction, or providing significantly more efficient and effective competitive service to a market presently being served. Criteria which can be used to determine if a railroad is proposing to provide a more competitive service to a currently served area include: (1) Creating a shorter route; (2) providing enhanced service capabilities (speed is not the only factor); (3) entering an interchange or market generating more than 5,000 cars per year or 5 percent of applicant's traffic; (4) filing the application as a condition of relief to a pending proceeding; and (5) permitting a carrier to become more competitive (extending it's length of haul) See. *Burlington Northern, Inc.—Control & Merger—St. L.*, 354 I.C.C. 616, 617 (1978).

(d) *Petition for clarification.* A request that the Commission clarify the applicability of any part of these regulations to a particular situation or explain the type of material needed to comply with these regulations.

(e) *Petition for waiver.* A request that the Commission either dispense with material required by the regulations, or accept material in place of that required by these regulations.

(f) *Primary application.* A proposal for approval filed under 49 U.S.C. 11343 which begins a new proceeding and is not proposed either as a condition to or as an alternative to Commission approval of another pending application.

(g) *Railroad.* Any common carrier by railroad as defined in 49 U.S.C. 10102(18)-(19).

(h) *Responsive applications.* Applications filed in response to a primary application seeking affirmative relief either as a condition to or in lieu of the approval of the primary application. Responsive applications include inconsistent applications, inclusion applications, and any other affirmative relief that requires an application to be filed with the Commission (such as trackage rights, purchases, construction, operation, pooling, terminal operations, abandonment, etc.).

(i) *Transferee.* The transferee is:

(1) The acquiring corporation in a control proceeding,

(2) The surviving corporation in a merger,

(3) The resulting corporation in a consolidation,

(4) The leasee in a lease,

(5) The purchaser in an acquisition, and

(6) The grantee of trackage rights in a trackage rights proceeding.

(j) *Transferor.* The transferor is:

(1) The corporation acquired in a control proceeding,

(2) The merging corporation in a merger,

(3) All corporations to be consolidated in a consolidation,

(4) The lessor in a lease,

(5) The seller in an acquisition, and

(6) The grantor of trackage rights in a trackage rights proceeding.

§ 1180.4 Procedures.

(a) *General.* (1) The original and 20 copies of all documents shall be filed in *major* proceedings. The original and 10 copies shall be filed in *significant* and *minor* proceedings.

(2) Each party to a proceeding shall choose a unique acronym of four letters or less for itself. It shall number each document filed in the proceeding consecutively, prefixed by its acronym.

(3) Any document filed with the Commission (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. At any time, the Commission may require the submission of additional copies of any document previously filed by any party to the proceeding.

(4) The Commission shall issue a list of all parties to the proceeding within 55 days of the application's acceptance in a *major* transaction, and within 45 days in a *significant* or *minor* transaction.

(b) *Prefiling notification.* (1) Between 3 to 6 months prior to the proposed filing of an application in a *major* transaction, and 2 to 4 months prior to the proposed filing of an application in a *significant* transaction, applicant shall file a notice with the Commission. The notice shall:

(i) Briefly describe the transaction,

(ii) Indicate the year to be used for the impact analyses,

(iii) Indicate the approximate filing date of the application, and

(iv) Indicate why the transaction is *major* or *significant* (how a major market extension results).

(2) The Commission will publish a notice in the FEDERAL REGISTER within 30 days of receipt of the applicant's notice. The publication shall contain:

(i) A brief description of the transaction,

(ii) The year to be used for the impact analysis,

(iii) The approximate filing date,

(iv) A determination that the transaction is *major, significant,* or *minor,* and

(v) A statement of any additional information which must be filed with the application in order for the application to be considered complete.

(3) A prefiling notice may be amended to indicate a change in the anticipated filing date.

(c) *Application.* (1) The fee to file a primary application with the Commission under these procedures is set forth at 49 CFR 1002.2(f) (44) through (49). There is no filing fee for a directly related application filed by a party that filed the primary application. The fee for a directly related or responsive application filed by another party is set forth in 49 CFR 1002.2(f) (46) through (49). For finance-related exemption filed by a party, the fee is set forth in 49 CFR 1002.2(f) (46) through (49).

(2) Filing requirements.

(i) The original of all applications shall be signed in ink by the applicant, if an individual; by all partners, if a partnership; and if a corporation, association, or other similar form of organization, by its president, or such other executive officer having knowledge of the matters therein contained and duly designated for that purpose by the applicant. Applications shall be made under oath and shall contain an appropriate certification (if a corporation, by its secretary) showing that the affiant is duly authorized to verify and file the application. Any person controlling an applicant shall also sign the application.

(ii) The application shall be filed with Secretary, Interstate Commerce Commission, Washington, DC 20423.

(iii) Each copy of the application shall conform in all respects to the original and shall be complete in itself except that the signature in the copies may be stamped or typed and the notarial seal may be omitted. In like manner, where certified copies of documents are filed with the application, conformed copies thereof, showing certification in stamped or typewritten form, will be sufficient to accompany the additional copies of the application.

(iv) All applications required to be filed with the Commission or served on designated persons shall include all exhibits, except as otherwise specifically noted. Information from other documents may be incorporated by reference in the application. However, the documents must have been filed with the Commission within three years prior to filing of the application, the information must be up to date, and applicant must be prepared to supply copies of this information to interested persons on specific request.

(v) The applicant shall submit such additional information to support its application as the Commission may require.

(vi) Applicant shall file concurrently all directly related applications, *e.g.*, those seeking authority to construct or abandon rail lines, to issue securities, control motor carriers, obtain terminal operations, acquire trackage rights, et cetera.

(vii) The application shall contain a certificate of service indicating that all persons designated in § 1180.4(c)(5) have been served with a copy of the application.

(3) In a *major* or *significant* transaction, and in all responsive applications, all of the direct testimony of applicants, in the form of verified statements, shall be filed and served with each application.

(4) The application and all exhibits shall be considered part of the evidentiary record upon acceptance. Any portion of an application and exhibits will remain subject to motions to strike. However, no motion need be made to have the application and exhibits ad-

mitted to the evidentiary record. If a *major* or *significant* transaction is designated for oral hearing the presiding Administrative Law Judge shall have discretion in extraordinary circumstances to allow for the presentation of oral or written direct testimony not previously submitted with the application.

(5) Service. The applicant shall serve a conformed copy of an application filed under these procedures by first-class mail upon:

(i) The Governor (or Executive Officer), Public Service Commission, and the Department of Transportation of each State in which any part of the properties of the applicant carriers involved in the proposed transaction is situated;

(ii) The Secretary of the United States Department of Transportation (Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street, SW., Washington, DC 20590).

(iii) The Attorney General of the United States;

(iv) The Federal Trade Commission; and

(v) In *major* or *significant* transactions, all persons requesting a copy after the prefiling notice is published in the FEDERAL REGISTER.

(6) Application format. (i) The application shall be in the same sequence as the information is requested in these procedures, and shall be numbered to correspond to the numbering in the procedures.

(ii) If any material required in the application would lend itself to being placed in an appendix, this should be done. The appendix and application shall be tabulated and cross-referenced in an index for ease in locating and referring to the information. The appendixes shall be in the same sequence as the information required by these procedures. If certain information required in the application is not applicable, provide an explanation. The application should be bound, and it may be bound in more than one volume. If an application is more than one volume, the cover of each volume should be in a different color. The pages in each volume shall begin with 1, and be sequentially numbered.

(iii) If a question arises regarding an interpretation of the information or format to be included in the application, the party may contact the Commission's Section of Finance for assistance. It will provide informal opinions and interpretations which are not binding on the Commission.

(iv) All filing, service, or other requirements of these procedures must be complied with when filing the application. Copies of the application filed with the Commission shall be marked in red "Railroad Consolidation Application" on the transmittal envelope or package.

(v) The application shall conform to the typographical specifications of § 1104.2.

(7) Acceptance or rejection of an application.

(i) The Commission shall accept a complete application no later than 30 days after the application is filed with the Commission by publishing a notice in the FEDERAL REGISTER. A complete application contains all information for all applicant carriers required by these procedures, except as modified by advance waiver. The publication shall indicate the applicable time limits for processing the application. (These are the time limits of 49 U.S.C. 11345(b) for a *major* transaction, 49 U.S.C. 11345(c) for a *significant* transaction, and 49 U.S.C. 11345(d) for a *minor* transaction.)

(ii) The Commission shall reject an incomplete application by serving a decision no later than 30 days after the application is filed with the Commission. The decision shall explain specifically why the application was incomplete. A revised application may be submitted, incorporating portions of the prior application by reference. The resubmission or refiling of an application shall be considered a *de novo* filing for the purpose of computation of the time periods, provided that the resubmitted application is accepted as complete.

(8) The application must present a *prima facie* case. Applicants can fail to meet their burden of proof and thus not present a *prima facie* case either by (i) disclosing facts that, even if construed in their most favorable light, are insufficient to support a finding

that the proposal is consistent with the public interest, or by (ii) disclosing facts that affirmatively demonstrate that the proposal is not in the public interest. See Ex Parte No. 282 (Sub-No. 3A), *Railroad Consolidation Procedures Expedited Processing,* 363 I.C.C. 767 (1980).

(d) *Response to application.* (1) Written comments.

(i) *Time to file.* (A) Written comments on a *major* transaction must be filed no later than 45 days after an application is accepted.

(B) Written comments on *significant* or *minor* transactions must be filed within 30 days of the application's acceptance.

(ii) *Service.* Written comments shall be concurrently served by first-class mail on:

(A) The applicants (at each address given in the application),

(B) The United States Secretary of Transportation,

(C) The Attorney General of the United States, and

(D) All parties of record within 10 days of service of the service list by the Commission.

(iii) *Contents.* Written comments must contain:

(A) The docket number and title of the proceeding.

(B) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made.

(C) The commenting party's position (in support, opposition, or undetermined).

(D) If the commenting party intends to participate formally in a proceeding or merely comment upon the proposal.

(E) If desired, a request for an oral hearing with reasons supporting this request. The request must indicate the disputed material facts that can only be resolved at a hearing.

(F) A list of all information sought to be discovered from applicant carriers.

(G) A detailed statement of the issues in *major* and *significant* transactions reflecting the relevant underlying statutory criteria, policy statement (for *major* transactions), and antitrust policy which the Commission must consider in the proceeding.

(H) An initial list of specific protective conditions sought *by nonrailroads* in *major* and *significant* transactions.

(I) The following information *by railroads* filing written comments in *major,* and *significant* transactions:

(*1*) Any existing preferential solicitation agreements.

(*2*) A list of all run-through train operations.

(*3*) An initial list of specific protective conditions sought and a statement concerning whether the commenting railroad intends to file responsive applications, along with a description of the proposed transactions. This will be considered a prefiling notice without which the Commission will not entertain responsive applications.

(iv) *Party.* All persons who file timely written comments shall be a party of record if they so indicate in their comments. In this event, no petition for leave to intervene need be filed.

(2) The Secretary of Transportation and Attorney General of the United States shall file written comments with the Commission within 60 days of the date of acceptance of the application in a *major* transaction. For *significant* and *minor* transactions these comments are due within 45 days of the date of acceptance of the application. These comments shall comply with paragraphs (d)(1)(ii) and (d)(1)(iii) of this section as to service and contents.

(3) A second list of protective conditions shall be filed with the Commission within 75 days of acceptance of the application in a *major* transaction, and within 60 days of acceptance of the application in a *significant* transaction. It shall be concurrently served by first-class mail on all parties of record. The second list of protective conditions shall modify the first list based upon changing conditions, such as protective conditions sought by other parties to the proceeding. Parties to the proceeding shall not be permitted to seek any protective conditions not contained in the second list of protective conditions. This does not preclude refinements in conditions sought, particularly when stipulations to conditions are reached.

(4) Responsive applications.

(i) All responsive applications in *major* transactions shall be filed 90 days, and in *significant* transactions 60 days, after acceptance of the primary application. No responsive applications shall be permitted to *minor* transactions.

(ii) Responsive applications which are not *major* are presumed to be *significant* transactions.

(iii) Responsive applications shall comply as fully as possible with appropriate Commission regulations. Extensions of time for filing are not permitted. The filing of an incomplete application, coupled with an extension of time to complete the application, may be permitted if authorized by the Commission in advance.

(iv) Any petitions for waiver, clarification, extension of time, or for leave to file an incomplete application, or to rebut the presumption of a *significant* transaction, must be filed in advance of the filing of the responsive application (at least 45 days in advance in *major* transactions and 30 days in *significant* transactions).

(v) Each responsive application filed and accepted (if required) is considered consolidated with the primary application.

(e) *Evidentiary proceeding.* (1) The Commission may order an oral public hearing, a hearing by written submissions, or another kind of evidentiary proceeding. The determination will generally be made on the basis of the needs indicated by the written comments.

(2) The evidentiary proceeding will be completed:

(i) In 24 months (after the primary application is accepted) for a *major* transaction,

(ii) In 180 days for a *significant* transaction, and

(iii) In 105 days for a *minor* transaction;

(3) A final decision on the primary application and on all consolidated cases will be issued;

(i) In 180 days (after the conclusion of the evidentiary proceeding) for a *major* transaction,

(ii) In 90 days for a *significant* transaction, and

(iii) In 45 days for a *minor* transaction.

(4) The Secretary of Transportation may propose modifications to any transaction and shall have standing to appear before the Commission in support of any such proposed modification.

(f) *Waiver or clarification.* (1) Upon petition of a prospective applicant, the Commission may waive or clarify a portion of these procedures. A petition to waive all of the procedures will not be entertained.

(2) Except as otherwise provided in paragraph (d)(4)(iv) of this section, petitions for waiver or clarification must be filed at least 45 days before the application is filed.

(3) No replies to a petition for waiver will be permitted, except where a proceeding involving the same parties and a related transaction is pending before us.[1] When a reply is permitted, the petition shall be served by first-class mail on all parties to the pending proceedings, with a reply due within 10 days of service. Replies to a petition for clarification shall be permitted within 10 days of the petition's filing.

(4) A waiver or clarification granted to any applicant in a proceeding shall apply to any other party to the proceeding unless otherwise indicated.

(5) All petitions for waiver or clarification must specify the sections for which waiver or clarification is sought and give the specific reasons why each waiver or clarification is necessary.

(g) *Notice of exemption.* (1) To qualify for an exemption under § 1180.2(d), a railroad must file a verified notice of the transaction with the Commission at least one week before the transaction is consummated indicating the proposed consummation date. Before a notice is filed, the railroad shall obtain a docket number from the Commission's Office of the Secretary.

(i) The notice shall contain the information required in § 1180.6(a)(1)(i)-(iii), (a)(5)-(6), and (a)(7)(ii), and indicate the level of labor protection to be imposed.

(ii) The Commission shall publish a notice in the FEDERAL REGISTER within 30 days of the filing of the notice of

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[1] See *Itel Corp.—Control-Green Bay and W. R. Co.*, 354 I.C.C. 232, 233 (1978).

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exemption. The publication will indicate the labor protection required. If the notice of exemption contains false or misleading information which is brought to the Commission's attention, the Commission shall summarily revoke the exemption for that carrier and require divestiture.

(iii) Other exemptions that may be relevant to a proposal under this provision are 49 CFR Part 1150, Subpart D for transactions under 49 U.S.C. 10901, and 49 CFR Part 1175, for securities.

(2)(i) To qualify for an exemption under § 1180.2(d)(7) (acquisition or renewal of trackage rights agreements), in addition to the notice, the railroad must file a caption summary suitable for publication in the FEDERAL REGISTER. The caption summary must be in the following form:

INTERSTATE COMMERCE COMMISSION

Notice of Exemption

Finance Docket No.

(1)—Trackage Rights—(2)

(2) (3) to grant (4) trackage rights to (1) between (5). The trackage rights will be effective on (6).

This notice is filed under § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Commission.

James H. Bayne,
Secretary.

The following key identifies the information symbolized in the summary.

(1) Name of the tenant railroad.

(2) Name of the landlord railroad.

(3) If an agreement has been entered use "has agreed", but if an agreement has been reached but not entered use "will agree."

(4) Indicate whether "overhead" or "local" trackage rights are involved.

(5) Describe the trackage rights.

(6) State the date the trackage rights agreement is proposed to be consummated.

(ii) The Commission will publish the caption summary in the FEDERAL REGISTER within 20 days of the date that it is filed with the Commission. The filing of a petition to revoke under 49 U.S.C. 10505(d) does not stay the effectiveness of an exemption.

(3) The railroad must certify that it has complied with the notice requirements of § 1105.11.

(h) *Official notice.* In connection with any application or request for relief under these procedures, the Commission may take official notice of any or all of the following information. These data will be presumed valid unless discredited by any party. A party relying on information to be noticed officially shall list the information. Upon request, the party shall make the official notice material available. Any party is free to challenge the relevance or application of any such data, or the weight that should be accorded it.

(1) Annual ICC Form R-1 Reports submitted by rail carriers.

(2) Quarterly Commodity Statistics submitted by rail carriers.

(3) ICC Monthly Labor Statistics.

(4) Quarterly Financial Statements of Rail Carriers.

(5) All other reports submitted to the ICC under oath.

(6) Annual 1-percent Waybill Sample.

(7) Federal Reserve Board Production Statistics.

(8) AAR compilations of bad order ratios, equipment ownership and repair statistics, and freight car order figures.

(i) *Untimely decision.* If the Commission does not issue a timely decision that is a final action under 49 U.S.C. 10327, it will send written notice to Congress that the decision was not issued and the reasons why it was not issued.

[47 FR 9844, Mar. 8, 1982. Redesignated at 47 FR 49592, Nov. 1, 1982 and amended at 49 FR 15088, Apr. 17, 1984; 50 FR 15751, Apr. 22, 1985; 51 FR 4928, Feb. 10, 1986; 51 FR 25207, July 11, 1986; 52 FR 46484, Dec. 8, 1987]

§ 1180.5 [Reserved]

§ 1180.6 Supporting information.

(a) All applications filed under 49 U.S.C. 11343 shall show in the title the names of the applicants and the nature of the proposed transaction. Beneath the title indicate the name, title, business address and telephone number of the person(s) to whom correspondence with respect to the application should be addressed. The following information shall be included in all applications:

(1) A description of the proposed transaction, including appropriate references to any supporting exhibits and statements contained in the application and discussing the following:

(i) A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

(ii) The proposed time schedule for consummation of the proposed transaction.

(iii) The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

(iv) The nature and amount of any new securities or other financial arrangements.

(2) A detailed discussion of the public interest justifications in support of the application, indicating how the proposed transaction is consistent with the public interest, with particular regard to the relevant statutory criteria, including

(i) The effect of the transaction on inter- and intramodal competition, including a description of the relevant markets (see § 1180.7). Include a discussion of whether, as a result of the transaction, there is likely to be any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

(ii) The financial consideration involved in the proposed transaction, and any economies, to be effected in operations, and any increase in traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from the consummation of the proposed transaction.

(iii) The effect of the increase, if any, of total fixed charges resulting from the proposed transaction.

(iv) The effect of the proposed transaction upon the adequacy of transportation service to the public, as measured by the continuation of essential transportation services by applicants and other carriers.

(v) The effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached.

(vi) The effect of inclusion (or lack of inclusion) in the proposed transaction of other railroads in the territory, under 49 U.S.C. 11344.

(3) Any other supporting or descriptive statements applicants deem material.

(4) An opinion of applicants' counsel that the transaction meets the requirements of the law and will be legally authorized and valid, if approved by the Commission. This should include specific references to any pertinent provisions of applicants' bylaws or charter or articles of incorporation.[2]

(5) A list of the State(s) in which any part of the property of each applicant carrier is situated.

(6) Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Commission.

(7) Explanation of the transaction.

(i) Describe the nature of the transaction (e.g., merger, control, purchase, trackage rights), the significant terms and conditions, and the consideration to be paid (monetary or otherwise).

(ii) Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.[3] In addition, parties to exempt trackage rights agreements and renewal of agreements described at § 1180.2(d)(7) must submit an original and one copy of the executed agreement or renewal agreement with the notice of exemption, or within 10 days of the date that the agreement is executed, whichever is later.

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[2] An opinion of counsel is not required in a control transaction for the party sought to be controlled, or in a responsive application for the party against whom relief is sought.

(iii) If a consolidation or merger is proposed, indicate: (A) The name of the company resulting from the consolidation or merger; (B) the State or territory under the laws of which the consolidated company is to be formed or the merged company is to file its certificate of amendment; (C) the capitalization proposed for the resulting company; and (D) the amount and character of capital stock and other securities to be issued.

(iv) Court order (exhibit 3). If a trustee, receiver, assignee, or personal representative of the real party in interest is an applicant, submit a certified copy of the order, if any, of the court having jurisdiction, authorizing the contemplated action.

(v) State whether the property involved in the proposed transaction includes all the property of the applicant carriers and, if not, describe what property is included in the proposed transaction.

(vi) Briefly describe the principal routes and termini of the lines involved, the principal points of interchange on the routes, and the amount of main-line mileage and branch line mileage involved.

(vii) State whether any governmental financial assistance is involved in the proposed transaction and, if so, the form, amount, source, and application of such financial assistance.

(8) Environmental data (exhibit 4). Submit information and data with respect to environmental matters prepared in accordance with 49 CFR Part 1105. In *major* and *significant* transactions, applicants shall, as soon as possible, and no later than the filing of a notice of intent, consult with the Commission's Energy and Environment Branch for the proper format of the environmental report.

(9) Energy data (exhibit 5). Submit information and data with respect to energy consumption prepared in accordance with 49 CFR Part 1106.

(b) Submit the following information in a *major* or *significant* transaction:

(1) Form 10-K (exhibit 6). Submit applicant carriers' most recent filing with the Securities and Exchange Commission (SEC) under 17 CFR 249.310. This shall not be incorporated by reference, and shall be updated with any Form 10-K subsequently filed with the SEC over the duration of the proceeding.

(2) Form S-14 (exhibit 7). Submit applicant carriers' most recent filing with the SEC under 17 CFR 239.23. This shall not be incorporated by reference, and shall be updated with any Form S-14 subsequently filed with the SEC over the duration of the proceeding.

(3) Change in control (exhibit 8). Indicate any change in ownership, control, or officers not indicated in the most recent annual report Form R-1.

(4) Annual reports (exhibit 9). Submit applicant carriers' two most recent annual reports to stockholders. This shall not be incorporated by reference, and shall be updated with any annual or quarterly report to stockholders issued over the duration of the proceeding.

(5) Issues (exhibit 10). Submit a discussion of any other issues relevant to the transaction.

(6) Corporate chart (exhibit 11). Submit a corporate chart indicating all relationships between applicant carriers and all affiliates and subsidiaries and also companies controlling applicant carriers directly, indirectly or through another entity (each chart shall indicate the percentage ownership of every company on the chart by any other company on the chart). For each company include a statement indicating (i) any common officers or directors for every entity on the chart (with reference to the Commission decision by docket number and date authorizing the holding of such posi-

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[3] A final signed contract or agreement need not be filed with a responsive application. However, a draft contract or agreement should be submitted containing the significant terms proposed.

tions, or an explanation of why such authorization was not required) and (ii) whether each company is a noncarrier or carrier (by railroad, motor, or water, including the number of any Commission certificate or permit, and the docket number of any proceeding pending before the Commission). Such information may be referenced through notes to the chart.

(7) If applicant is not a carrier, indicate (i) the type of business in which it is engaged, (ii) the length of time so engaged, and (iii) its present and prospective activities which have or may have a relation to transportation subject to 49 U.S.C. Subtitle IV.

(8) Indicate whether there are any direct or indirect intercorporate or financial relationships at the time the application is filed, not disclosed elsewhere in the application, through holding companies, ownership of securities, or otherwise, between (i) applicant carriers and any carrier or person affiliated with any carrier or (ii) a person affiliated with applicant carriers and any carrier or person affiliated with any other carrier. Indicate the nature and extent of such relationships, if they exist, and, if an applicant carrier owns securities of a carrier subject to 49 U.S.C. Subtitle IV provide the carrier's name, a description of securities, par value of each class of securities held, and the applicant carriers' percentage of total ownership.

[47 FR 9844, Mar. 8, 1982. Redesignated at 47 FR 49592, Nov. 1, 1982, and amended at 50 FR 15751, Apr. 22, 1985]

§ 1180.7 Market analyses.

Impact analyses (exhibit 12). In *major* and *significant* transactions applicants shall submit analyses of the impacts of the proposed transaction—both adverse and beneficial—on inter- and intramodal competition for freight surface transportation in the reigons affected by the transaction and on the provision of essential services by applicants and other carriers. An impact analysis should include underlying data, a study of the implications of that data, and a description of the resulting likely effects of the transaction on transportation alternatives available to the shipping public. Each aspect of the analysis should specifically address significant impacts as they relate to the statutory criteria (49 U.S.C. 11344(b) or (d), essential services, and competition). The Commission may identify particular markets and issues that it believes warrant further study. If appropriate, the Commission will also indicate the format of such analyses. Applicants must address markets and issues identified by the Commission, but also any others they consider relevant. Specific regulations on impact analyses are not provided so that parties will have the greatest leeway to develop the best evidence on the impacts of each individual transaction. General guidelines follow:

(a) Applicants shall prepare analyses of the anticipated effects of the transaction on traffic patterns, market concentrations, or transportation alternatives available to the shipping public.

(b) Applicants (and any other party submitting such analyses) must demonstrate both the relevancy of the market and issues analyzed and the validity of the methodology. All underlying assumptions must be clearly stated.

(c) Supporting data may (but need not) include: Current and projected traffic flows; data underlying sales forecasts or marketing goals; interchange data; market share analysis; diversion studies; and/or shipper surveys. *It is important to note that these types of studies are neither limiting nor all inclusive.* The parties must provide supporting data, but are free to choose the type(s) and format.

(d) Analyses should reflect the consolidated company's marketing plan and existing and potential competitive alternatives (inter- as well intramodal). They can address:

(1) City pairs, interregional movements, movements through a point, or other factors;

(2) A particular commodity, group of commodities, or other commodity factor that will be significantly affected by the transaction; or

(3) Other effects of the transaction (such as on a particular type of service offered).

§ 1180.8 Operational data.

(a) For *major* and *significant* transactions: Operating plan (exhibit 13). Submit a summary of the proposed operating plan changes, based on the impact analyses, that will result from the transaction, and their anticipated timing, allowing for any time required to complete rehabilitation, upgrading, yard construction, or other major operational changes following consummation of the proposed transaction. The plan should make clear the gains in service, operating efficiencies, and other benefits anticipated from the merger. The plan should include:

(1) The patterns of service on the properties, including the proposed principal routes, proposed consolidations of main-line operations, and the anticipated traffic density and general categories of traffic (including numbers of trains) on all main and secondary lines in the system. Identify all yards expected to have an increase in activity greater than 20 percent. Changes in operations may be summarized in a *pro forma* density chart.

(2) If commuter or other passenger services are operated over the lines of applicant carriers, detail any impacts anticipated on such services, including delays which may be occasioned because a line is scheduled to handle increased traffic due to route consolidations.

(3) The anticipated equipment requirements of the proposed system, including locomotives, rolling stock by type, and maintenance-of-way equipment; plans for acquisition and retirement of equipment; projected improvements in equipment utilization and their relation to operating changes; and how these will lead to the financial and service benefits described in the summary.

(4) A description of the effect of any deferred maintenance or delayed capital improvements on any road or equipment properties involved, the schedule for eliminating such deferrals, details of general system rehabilitation including rehabilitation relating to the transaction (including proposed yard and terminal modifications), and how these activities will lead to the service improvements or operating economies anticipated from the transaction.

(5) Density charts (exhibit 14). Gross ton-mile traffic density charts shall be filed for applicant carriers containing a map geographically showing those lines handling 1 million gross ton-miles per mile road or more per year and respective densities, expressed in gross ton-miles per year, in each direction, in segments of such lines between major freight yards and terminals, including major intramodal and intermodal interchange points, using the corporate or political subdivision name of the points shown as well as the railroad station name. The mileage of each segment of line shall be provided, and should be shown on the chart. Data shown in the density chart shall be for the latest available full calender year preceding the filing of the application. At applicants' option data may be shown on the density chart or an explanatory list.

(b) For *minor* transactions: Operating plan-minor (exhibit 15). Discuss any significant changes in patterns or types of service as reflected by the operating plan expected to be used after consummation of the transaction. Where relevant, submit information related to the following:

(1) Traffic level density on lines proposed for joint operations.

(2) Impacts on commuter or other passenger service operated over a line which is to be downgraded, eliminated, or operated on a consolidated basis.

(3) Operating economies, which include, but are not limited to, estimated savings.

(4) Any anticipated discontinuances or abandonments.

§ 1180.9 Financial information.

The following information shall be provided for *major* and *significant* transactions, and for carriers shall conform to the Commission's Uniform System of Accounts, 49 CFR Part 1201:

(a) *Pro forma* balance sheet (exhibit 16). Where the transaction involves a proceeding other than a control, a *pro forma* balance sheet statement giving effect to the proposed transaction commencing for the first year of the

Impact Analysis in exhibit 12. The data shall be presented in columnar form showing:

(1) In the *first* column, the balance sheet of transferee on a corporate entity basis,

(2) In the *second* column, a balance sheet of transferor, on a corporate entity basis,

(3) In the *third* column, *pro forma* adjustments and eliminations; and

(4) In the *fourth* column, transferee's balance sheet giving effect to consumation of the proposed transaction.[4]

Each adjustment and elimination shall be properly footnoted and fully explained. A *pro forma balance sheet shall be submitted for the number of years following consummation necessary to effect the operating plan.*

(b) *Pro forma* income statement (exhibit 17). Where the transaction involves a proceeding other than a control, submit a *pro forma* income statement showing transferee's estimate of revenues, expenses, and net income for at least each of the 3 years following consummation of the transaction.[5] The *pro forma* data shall be presented in columnar form, showing

(1) in the first column, transferee's actual income statement on a corporate entity basis for the year indicated in the impact analysis in exhibit 12;

(2) in the *second* column, a similar income statement for the transferor;

(3) in the *third* column, forecasted adjustments to the combined revenues, expenses, and net income to reflect increases or decreases anticipated under the unified operations, and

(4) in the fourth column, a compilation of the first three columns into a *pro forma* income statement.[6]

The adjustments are to be supported by a statement explaining the basis used in determining the estimated changes in revenues, expenses, and net income appearing in the *third* column. Additionally, if the major financial advantages to be derived from the proposed transaction will not occur within 3 years after consummation, then applicant shall furnish additional information to reflect the number of years within which the financial advantages will be realized. The basis for all such data furnished shall be fully explained and supported.

(c) Sources and application of funds (exhibit 18). Transferor's and transferee's statement of sources and application of funds for the current year, and a forecast[7] of sources and application of funds for each carrier (if a merger or consolidation, the surviving or resulting corporation) for the year following consummation of the proposed transaction, and the years necessary to effectuate the operating plan.[8] The form and content of these statements should be constructed in accordance with the schedule: "Statement of Changes in Financial Position" required in the most recently filed Annual Report R-1 for Class I railroads.

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[4] Where the purchase of a line or line segment is involved, a procedure utilizing three columns should be followed. The *first* colum should show transferee's actual balance sheet on a corporate entity basis for the latest available 12-month period, the *second* column should show the adjustments necessitated by the purchase, and the *third* is a compilation of the first two columns into a *pro forma* balance sheet.

The transferor shall file a balance sheet similar to the one filed by the transferee, with the *second* column reflecting the adjustments resulting from the sale.

If the parent company (if any) of the transferee or transferor is affected, a similar balance sheet shall be filed for each.

All adjustments to these balance sheets shall be supported in footnotes to the appropriate balance sheet.

[5] If the operating plan requires more than 3 years to be put into effect, the *pro forma* income statement shall be prepared for as many years as necessary to implement fully the operating plan.

[6] Where the purchase of a line or line segment is involved, a procedure utilizing three columns should be followed. The *first* column should show transferee's actual income statement on a corporate entity basis for the latest available 12-month period, the *second* column should show the adjustment necessitated by the purchase, and the *third* column is a compilation of the first two columns into a *pro forma* income statement.

The transferor shall file an income statement similar to the one filed by the transferee, with the second column reflecting the adjustments resulting from the sale.

If the parent company (if any) of the transferor or transferee is affected, a similar statement shall be filed for each.

All adjustments to these income statements shall be supported in footnotes to the appropriate income statements.

[7] The forecast should reflect only changes anticipated to result from the proposed transaction. Forecasts are not required to reflect general economic conditions unrelated to the proposed transaction.

(d) Property encumbrance (exhibit 19). If any of the property covered by the application is encumbered and applicant has agreed to assume obligation or liability in respect thereof, submit:

(1) A description of the property encumbered.

(2) Amount of encumbrance and full description thereof, including maturity, interest rate, and other terms and conditions.

(3) Amount of encumbrance assumed or to be assumed by applicant.

(e) The Commission will incorporate by reference the current balance sheets and income statements of Class I railroads which are on file with the Commission. Class II and Class III railroads, and non-carrier entities shall submit balance sheets (exhibit 20) and income statements (exhibit 21) covering a period ending within 6 months before the application is filed.

Subpart B—Acquisition Procedures for Lines of Railroads in Reorganization

Source: 45 FR 6108, Jan. 25, 1980, unless otherwise noted. Redesignated at 47 FR 49592, Nov. 1, 1982.

§ 1180.20 Types of transactions.

Transactions proposed under the Milwaukee Railroad Restructuring Act, Pub. L. No. 96-101, Sections 5(b) and 17(b) are of 2 types: Major and Minor.

(a) A *major* transaction is a sale or transfer which will result in a major market extension.

(b) A *minor* transaction is any sale or transfer which will not result in a major market extension.

§ 1180.21 Identifying information.

(a) *All applications* filed under Pub. L. 96-101, Sections 5(b) and 17(b), shall show in the title the names of the applicants and the nature of the proposed transaction. Beneath the title indicate the name, title, business address, and telephone number of the person(s) to whom correspondence with respect to the application should be addressed. The following information shall be included in *all* applications seriatim:

(1) Summary. A narrative description of the proposed transaction shall serve as an introduction to the application. It shall include appropriate references to supporting exhibits and statements in the application and shall generally discuss the following matters:

(i) A summary of the proposed transaction including the name of applicants.

(ii) The proposed time schedule for consummation of the proposed transaction.

(iii) The purpose sought to be accomplished by the proposed transaction, *e.g.*, operating economies, elimination of excess facilities, extension of markets, improved financial viability.

(iv) The nature and amount of any new securities or other financial arrangements.

(v) A summary of the applicant's public interest justifications in support of the application indicating how the proposed transaction is consistent with the public interest, or why the public convenience and necessity permits issuance of a certificate, with particular regard to:

(A) The financial consideration involved in the proposed transaction, including an explanation of economies, if any, to be effected in buyer's operations, and increases, if any, in buyer's traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from consummation of the proposed transaction.

(B) The effect of the proposed transaction upon adequate rail and other transportation services to the public.

(C) The effect of the increase, if any, of total fixed charges to buyer resulting from the proposed transaction.

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[8] The *pro forma* balance sheets (exhibit 16), *pro forma* income statements (exhibit 17), and sources and application of funds (exhibit 18) shall cover the same years.

(D) The effect of any guaranty or assumption of payment of dividends or fixed charges contemplated by buyer in the proposed transaction.

(E) The effect of the proposed transaction upon buyer's and seller's employees.

(F) The effect of the proposed transaction on the remaining system and operations of the bankrupt carrier.

(vi) Any other supporting or descriptive statements applicant deems material.

(vii) An opinion of counsel of applicant that the transaction described in the application meets the requirements of the law and will be legally authorized and valid, if approved by the Commission and the bankruptcy court, with specific reference to any specifically pertinent provisions of applicant's charter or articles of incorporation.

(2) Identification of applicant carriers.

(i) Indicate the full and correct name of each applicant carrier and business address (street and number, city, State, and zip code).

(ii) Indicate the State or States in which any part of the property of each applicant carrier is situated.

(iii) Map (Exhibit 1). Submit a general or key map indicating clearly, in separate colors, or otherwise, the line or lines of buyer (if any) in their true relation to the lines to be acquired from seller, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the maps accompanying each application, 20 unbound copies of the map shall be filed with the Commission.

(3) Explanation of the transaction.

(i) Describe the nature of the transaction (*e.g.*, purchase, joint purchase, trackage rights, etc.), the significant terms and conditions, and the consideration to be paid (monetary or otherwise).

(ii) Agreement (Exhibit 2). Submit a copy of any contract or other written instrument entered into, and approved by the bankruptcy court, pertaining to the transaction covered by the application.

(iii) Court order (Exhibit 3). Submit a copy of the court order approving the agreement of transfer and its filing with the Commission.

(iv) State whether the property involved in the proposed transaction includes all the property of the seller and, if not, specifically describe what property is included in the proposed transaction.

(v) Describe in detail the principal routes and terminals of the lines involved, the principal points of interchange on the routes, and the amount of main line mileage and branch line mileage involved.

(vi) State whether any governmental financial assistance is involved in the proposed transaction and, if so, the form, amount, source, and application of such financial assistance.

(vii) Labor impact (Exhibit 4). Furnish the following information with respect to impacts on *railway* labor only:

(A) A copy of any agreement or agreements with employee organizations entered into as a result of the proposed transaction.

(B) For all personnel covered by pension plans supplemental to the Railroad Retirement Act, a list of the pension plans currently in effect, indicating whether or not they are funded, the extent of any unfunded liability, and the time required to bring the plans to a fully funded level.

(C) The number, location, craft or class and classification of all positions of the applicant carriers which under the proposed transaction are to be established, consolidated, created or transferred (including the point or points from and to which positions will be transferred).

(D) For each of the changes specified in paragraph (a)(3)(vii)(C) of this section, the cost and savings to the railroad(s) in effectuating such changes, listed for each of the three years following consummation of the proposed transaction and the amount by craft or class and classification to which such costs and/or savings will be attributed.

(E) The date or dates on which each job abolishment, transfer, consolidation, or creation set forth under paragraph (a)(3)(vii)(C) of this section is to be effectuated and a statement as to whether or not implementing agreements have been negotiated with appropriate labor organizations with respect to such proposed changes.

(F) The annual net change in employment for applicant carriers by craft or class and classification for the last 6 years preceding the filing of the application.

(viii) Energy data (Exhibit 5). Submit information and data with respect to energy consumption prepared in accordance with the ICC *Implementation of the Energy Policy and Conservation Act of 1975*, 49 CFR Part 1106.

(b) All applications proposing *major* transactions, as defined in § 1180.20, shall also include the following information:

(1) Identification of buyer.

(i) If buyer is a corporation indicate:

(A) Date of incorporation[1] and Government, State, or territory of incorporation.

(B) Name and business address of directors.

(C) Name, title and business address of officers.

(D) Name and business address of 10 principal stockholders as of last record date and their respective holdings.

(E) Charter (Exhibit 6). One copy of the charter or articles of incorporation, and the bylaws and amendments thereof, of buyer duly certified by the appropriate public officer.

(ii) If buyer is a partnership indicate:

(A) Date on which partnership was formed, and State and county in which it was formed.

(B) Name and business address of all present partners, including limited or silent partners and their respective interests.

(C) Partnership articles (Exhibit 7). A properly authenticated copy of the articles of partnership, if any.

(iii) If buyer is an association or other form of organization, other than a corporation indicate:

(A) Date of organization and place of organization.

(B) Full description of the nature and objectives of the organization.

(C) Name, title, and business address of officers and directors, or trustees.

(D) Name and business address of applicant's 10 principal stockholders or owners.

(E) Documents of association (Exhibit 8). A properly authenticated copy of articles of association, trust agreement, or other similar documents.

(iv) If buyer is a trustee, receiver, assignee, or a personal representative of the real party in interest, provide:

(A) The name and address of the court, if any, under the direction of which buyer is acting.

(B) The nature of the proceedings, if any, in which buyer was appointed.

(C) With respect to the real party in interest, indicate its full and correct name, business address (street and number, city, State, and zip code), type of entity, and its carrier status.

(D) Court appointment (Exhibit 9). A properly authenticated copy of the order of the court or instrument appointing each trustee, receiver, assignee, or personal representative which is a party to the transaction.

(v) Other authorizing document (Exhibit 10). If paragraphs (b)(1) (i), (ii), (iii), and (iv) of this section are not applicable, indicate identity, structure, statutory or charter powers of buyer, and submit appropriate organizational or authorizing documents, or indicate why none is available or necessary.

(vi) Corporate chart (Exhibit 11). Submit a corporate chart indicating all relationships between buyer and all affiliates and subsidiaries and also companies controlling buyer directly, indirectly or through another entity (each chart shall indicate the percentage ownership of every company on the chart by any other company on the chart). For each company include a statement indicating:

(A) Any common officers or directors for every entity on the chart (with reference to the Commission decision by docket number and date authorizing the holding of such positions, or an explanation of why such authorization was not required) and

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[1] If the applicant is incorporated or organized under the laws of, or authorized to operate in, more than one State, territory, or Federal district, give all pertinent facts as to such incorporations, organization, or authorization.

(B) Whether each company is a noncarrier or carrier (by railroad, motor, or water, including any Commission certificate or permit number, and the docket number of any proceeding pending before the Commission).

Such information may be referenced through notes to the chart.

(vii) If buyer is not a carrier, indicate (A) the type of business in which it is engaged, (B) the length of time so engaged, and (C) the particulars of its present and prospective activities which have a relation to transportation subject to 49 U.S.C. Subtitle IV.

(viii) Indicate whether there are any direct or indirect intercorporate or financial relationships at the time the application is filed, not disclosed in response to prior instructions, through holding companies, ownership of securities, or otherwise, between (A) buyer and any carrier or person affiliated with any carrier or (B) a person affiliated with buyer and any carrier or person affiliated with any other carrier. Indicate the nature and extent of such relationships, if they exist, and, if a buyer owns securities of a carrier subject to 49 U.S.C. Subtitle IV, provide the carrier's name, a description of securities, par value of each class of securities held, and the buyer's percentage of total ownership.

(ix) State the amount of acquiring buyer's outstanding capital stock, by classes, and in connection therewith the par value or stated value of each share, its voting rights, if any, the total number of stockholders of record, and the voting rights of all security holders.

(x) Annual reports (Exhibit 12). Submit a properly authenticated copy of the buyer's annual report, *if any*, to stockholders or shareholders for each of the two calendar or fiscal years preceding the filing of the application.

(2) Explanation of the transaction.

(i) Filing resolutions (Exhibit 13). Submit a copy of all resolutions of directors of buyer, authenticated by a proper executive officer, authorizing:

(A) The proposed transaction and

(B) where applicable, the filing of the application with the Commission for its approval and authorization.

If the charter or by-laws of the buyer require approval of the stockholders, submit a copy of the resolution of stockholders authorizing the proposed transaction and the filing of the application. All resolutions are to be accompanied by sufficient transcripts of the minutes of meetings of the directors or stockholders of the buyer to show the number of shares entitled to vote, the number of shares voted for and against the resolutions, and the numbers of shares/votes required to adopt the resolution.

(ii) Executing resolutions (Exhibit 14). Submit a copy of all resolutions of stockholders or directors of the buyer, or duly authorized committee thereof, authenticated by a proper executive officer of the applicant, designating by name and for that purpose the executive officer by whom the application is signed and verified, and filed on behalf of the applicant. For purposes of exhibits 13 and 14, in the event the resolutions of stockholders have not been obtained at the time the application is filed then such resolutions shall be obtained as soon as feasible, but not later than the next regularly scheduled stockholders' meeting. A copy of such resolutions shall be filed with the Commission within 30 days following such meeting.

(iii) Other evidence of authorization (Exhibit 15). If the buyer is an organization other than a corporation, submit documentary evidence showing authorization and designation of the individual or individuals signing, verifying, and filing on behalf of the buyer.

§ 1180.22 Traffic data.

The information required in this section should only be filed as part of an application proposing a *major* transaction.

(a) Density charts (Exhibit 16). Gross ton-mile traffic density charts shall be filed for buyer containing a map graphically showing principal lines (those handling 1 million gross ton-miles or more per year) and respective densities, expressed in gross ton-miles per year, in each direction, in segments of such lines between major freight yards and terminals, including major intramodal and intermodal interchange points, using the corporate or political subdivision name of the points shown as well as the railroad station name. The mileage of each segment of line shall be provided, and should be shown on the chart. Data shown in the density chart shall be for the latest available full calendar year preceding the filing of the application.

(b) Carload interchange data (Exhibit 17). Revenue carload interchange data between buyer and connecting line-haul rail carriers or water carriers (deleting intermediate switching railroads, if any) shall be in a table setting forth the gateway involved, each connecting line-haul railroad or water carrier, and for each connecting railroad or water carrier the number of interchange carloads originating on buyer's lines, the number of interchange carloads terminating on buyer's lines, the overhead traffic delivered or received by buyer, and a separate total of overhead traffic and the total cars interchanged. Gateways to be listed shall be those handling 5,000 or more revenue carloads or 5 percent of total revenue carloads annually, whichever is smaller. Where two or more gateways are contiguous or nearly contiguous, they should be totalled (as examples, Dallas-Fort Worth, Minneapolis-St. Paul, Omaha-Council Bluffs, et cetera). If necessary, such grouped gateways may also be shown separately in supporting tables. Data shown in Exhibit 17 shall be for the latest available full calendar year preceding the filing of the application. It shall be organized as shown in the table in the Appendix.

(c) Carload origin and destination (Exhibit 18). An exhibit containing revenue carload origin and destination data for the latest available full calendar year preceding the filing of the application, shall list the following:

(1) Points of origin of 5,000 or more revenue carloads or 5 percent or more of buyer's total originated revenue carloads annually, whichever is smaller, broken down to show originations of local and interline carloads for each point, and

(2) Points of destination of 5,000 or more revenue carloads, or 5 percent or more of buyer's total terminated revenue carloads annually, whichever is smaller, broken down to show terminations of local and interline carloads for each point. This data shall include all of buyer's carloads at each point originated or terminated, as the case may be, by a line-haul, terminal, or switching railroad or by a motor carrier performing pickup or delivery service, *except* where such information would identify a specific shipper(s) or a specific receiver(s).

(3) The information provided in (1) and (2) above should be provided from seller for traffic moving over the line to be sold.

(d) Freight car fleet (Exhibit 19). A summary table shall show the freight car fleet cars owned and leased by buyer for the latest available full calendar year preceding the filing of the application, the number of box, flat (including rack cars), gondola, open hopper, covered hopper, refrigerator, miscellaneous, and total number of cars owned and leased, and the aggregate capacity of these cars. The same information shall be provided for the seller, including the change expected as the result of the proposed transfer.

(e) Revenue freight traffic (Exhibit 20). A table shall show the buyer's revenue freight traffic, indicating for the latest available full calendar year preceding the filing of the application:

(1) The number of local, interline originated, interline terminated, overhead, and total carloads,

(2) Total revenue tons,

(3) Revenue ton-miles, and

(4) Total freight revenue.

(f) Commodity revenue (Exhibit 21). A table shall show commodity group revenue (at the two-digit level of the Standard Transportation Commodity Code) for the buyer's 5 largest revenue producing commodity groups as a percentage of total revenue for the latest available full calendar year preceding the filing of the application, indicating the 5 largest commodity groups, the revenues attributable to each group and the percentage of that group's revenue as it relates to total revenue.

(g) Commodity tonnage (Exhibit 22). For the *commodity groups shown in the table required in paragraph* (f) *of this section,* a table shall show commodity group tonnage as a percentage of total tonnage, for the latest available full calendar year preceding the filing of the application, indicating the various commodity groups, the tonnage attributable to each group and the percentage of that group's tonnage as it relates to total tonnage.

(h) Market Study. For the buyer, a narrative discussion shall identify the markets which will be affected by the proposed acquisition, the traffic expected to be generated and/or recovered, and the levels of business expected on the line at issue.

§ 1180.23 Operational data.

For *all* transactions: Operating Plan (Exhibit 23). Submit a description of the proposed operating plan to be effectuated upon approval of the transaction. This shall include information projected for the time required to complete rehabilitation, upgrading or other major operational changes following consummation of the proposed transactions, and describe the following with particularity:[2]

(a) Any significant changes in patterns of service.

(b) Traffic level and density on lines proposed for joint operations.

(c) The extent to which deferred maintenance or delayed capital improvements apply to any line of railroad or equipment involved, the Federal Railroad Administration Class level of the line involved, and the schedule for eliminating such deferrals. Include details of buyer's general system rehabilitation, specific rehabilitation relating to the transaction, and upgrading plans including proposed yard and terminal modifications, together with an estimate of anticipated service improvements or operating economies associated with such projects.

(d) Impact on the use of yards or shop facilities and any necessary modifications to yards or terminals.

(e) Impacts on commuter or other passenger service operated over the line being acquired.

(f) Operating economies, which include, but are not limited to, estimated savings.

(g) Any associated discontinuances or abandonments.

§ 1180.24 Financial information.

(a) The following information shall be provided for all *major* transactions:

(1) Balance sheets (Exhibit 24). General balance sheets, for the most recent full calendar year as appropriate, of the following:

(i) Buyer on a corporate entity basis.

(ii) Buyer's parent company on a corporate entity basis.

(iii) Buyer and subsidiaries on a consolidated basis.

(2) *Pro forma* balance sheets (Exhibit 25). Submit a *pro forma* balance sheet statement giving effect to the proposed transaction for the most recent full calendar year.

(i) A procedure utilizing three columns should be followed. The *first* column should show buyer's actual balance sheet on a corporate entity basis for the latest available 12 month period, the *second* column should show the adjustments necessitated by the purchase, and the *third* column is a compilation of the first two columns into a *pro forma* balance sheet.

(ii) If the parent company (if any) of the buyer is affected, a similar balance sheet shall be filed for each.

(iii) All adjustments to these balance sheets shall be supported in footnotes to the appropriate balance sheet.

(iv) A *pro forma* balance sheet shall be submitted for the number of years following consummation necessary to effect the operating plan.

(3) Income statements (Exhibit 26). Income statements, for the most recent full calendar year, as appropriate, of the following:

(i) Buyer on a corporate entity basis.

(ii) Buyer's parent company on a corporate entity basis.

(iii) Buyer and subsidiaries on a consolidated basis.

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[2] For the purpose of completing this application, buyer is authorized to obtain the data necessary to complete this exhibit from the trustee and/or the directed rail carrier.

(4) *Pro forma* income statements (Exhibit 27). Submit a *pro forma* income statement showing buyer's estimate of revenues, expenses, and net income for at least each of the 3 years following consummation of the transaction.

(i) A procedure utilizing three columns should be followed. The *first* column should show buyer's actual income statement on a corporate entity basis for the latest available 12-month period, the *second* column should show the adjustments necessitated by the purchase, and the *third* column is a compilation of the first two columns into a *pro forma* income statement.

(ii) If the parent company (if any) of the buyer is affected, a similar statement shall be filed for each.

(iii) All adjustments to these income statements shall be supported in footnotes to the appropriate income statement.

If the operating plan requires more than three years to be put into effect, the *pro forma* income statement shall be prepared for as many years as necessary to implement fully the operating plan.

(b) The following information shall be provided for all *minor* transactions:

(1) Balance sheets—minor (Exhibit 28). General balance sheets for the latest 6-month period for buyer on corporate entity basis.

(2) Income statements—minor (Exhibit 27). Income statements for the latest 6-month period for buyer on a corporate entity basis.

§ 1180.25 Procedures.

(a) *General.* (1) Any document filed with the Commission, including applications, pleadings, etc., shall be promptly furnished to interested persons on request, unless subject to a protective order. At any time, the Commission may require the submission of additional copies of any document previously filed by any party to the proceeding.

(2) The original and 20 copies of all documents shall be filed in *major* proceedings. The original and 10 copies shall be filed in *minor* proceedings.

(3) Each party to a proceeding shall choose a unique acronym of four letters or less for itself. It shall number each document filed in the proceeding consecutively, prefixed by its acronym.

(b) *Application.* (1) The filing fee to file an application with the Commission under these procedures is set forth in 49 CFR 1002.2(f) (46) through (49).

(2) Filing. (i) The original of all applications shall be signed in ink by the buyer and seller. If buyer is a partnership, all partners must sign; and if a corporation, association, or other similar form of organization, the signature should be that of its president, or such other executive officer having knowledge of the matters therein contained and duly designated for that purpose. Applications shall be made under oath and shall contain an appropriate certification (if a corporation, by its secretary) showing that the affiant is duly authorized to verify and file the application. Any person controlling a buyer shall also sign the application.

(ii) The application shall be filed with Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

(iii) Each copy of the application shall conform in all respects to the original and shall be complete in itself except that the signature in the copies may be stamped or typed and the notarial seal may be omitted. In like manner where certified copies of documents are filed with the original application, conformed copies thereof, showing certification in stamped or typewritten form, will be sufficient to accompany the additional copies of the application.

(iv) All applications required to be filed with the Commission or served on designated persons shall include all exhibits, except as otherwise specifically noted.

(v) The buyer or seller shall submit such additional information to support its application as the Commission may require.

(vi) Buyer shall file concurrently with applications under Pub. L. No. 96-101 sections 5(b) and 17(b) all directly related applications, *e.g.*, those seeking authority to construct or abandon rail lines, to issue securities, control motor carriers, obtain terminal operations, acquire trackage rights, etc. All such applications will be considered under the schedule applicable to the initial application.

(vii) Exception to required exhibits. The original and one copy of Exhibit 16 shall be filed with the Commission. Copies shall be maintained at buyer's and seller's headquarters for inspection by interested parties. Buyer and seller must also file with the Commission one copy of a machine readable tape containing only the data shown in Exhibit 16. This tape will be returned to applicants when the Commission issues its decision, and no use of the tape will be made by the Commission other than for the purpose of adjudicating the application.

(3) In all applications, all of the direct testimony of buyer and seller, in the form of verified statements, shall be filed and served with each application.

(4) The application and all exhibits shall be considered part of the evidentiary record upon acceptance. Any portion of an application and exhibits will remain subject to motions to strike. However, no motion need be made to have the application and exhibits admitted to the evidentiary record.

(5) Service. The applicant shall serve a conformed copy of an application filed under these procedures by first class mail upon:

(i) The Governor (or Executive Officer), Public Service Commission, and the Department of Transportation of each State in which any part of the properties of the applicant carriers involved in the proposed transaction is situated;

(ii) The United States Secretary of Transportation (Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street, SW, Washington, DC 20590);

(iii) The Attorney General of the United States;

(iv) The Federal Trade Commission; and

(v) All parties to the bankruptcy court proceedings.

The application shall contain a certificate of service indicating that all persons so designated have been served a copy of the application.

(6) Application format.

(i) The application shall be in the same sequence as the information is requested in these procedures, and shall be numbered to correspond to the numbering in the procedures.

(ii) If any material required in the application would lend itself to being placed in an appendix, this should be done. The appendix and application shall be tabulated and cross-referenced in an index for ease in locating and referring to the information. The appendices shall be in the same sequence as the information is required by the regulations. The application should be bound, and it may be bound in more than one volume. If an application is more than one volume, the cover of each volume should be in a different color. The pages in each volume should begin with 1, and shall be sequentially numbered.

(iii) If a question arises regarding an interpretation of the information or format to be included in the application, including whether or not a transaction would result in a major market extension, the party may contact the Commission for assistance.

(iv) All filing, service, or other requirements of these procedures must be complied with when filing the application. Copies of the application filed with the Commission shall be marked in red "Special Railroad Acquisition Application" on the transmittal envelope or package.

(7) Acceptance or rejection of an application.

(i) The Commission shall accept a complete application by decision no later than 10 days after the application is filed with the Commission, and shall then publish a notice in the FEDERAL REGISTER. A complete application contains all information for all buyers and sellers required by these procedures, except as modified by advance waiver.

(ii) The Commission shall reject an incomplete application by serving a decision no later than 10 days after the application is filed with the Commission. The decision shall give specific reasons why the application was rejected, and specify where the application was incomplete. A revised application may be submitted, incorporating portions of the prior application by reference, and the Commission will determine whether the resubmitted application conforms with all prescribed regulations. The resubmission or refiling of an application shall be considered a de novo filing for the purpose of computation of the time periods, provided that the resubmitted application is accepted.

(c) *Response to application.* (1) Written comments. (i) Written comments in support of or opposition to the proposed transaction must be filed no later than 30 days after an application is accepted.

(ii) Written comments must be verified.

(iii) Written comments shall be concurrently served by first class mail on:

(A) The applicants (at each address given in the application),

(B) The United States Secretary of Transportation, and

(C) The Attorney General of the United States.

(iv) Written comments must contain:

(A) The docket number and title of the proceeding.

(B) The name and address of the commenting party.

(C) The name, address, and telephone number of the commenting party's representative upon whom service shall be made.

(D) The commenting party's position (in support, opposition, or undetermined), and verified statements in support of that position.

(E) A list of conditions and modifications sought.

(v) All persons who file timely written comments shall be a party. In this event, no petition for leave to intervene need by filed.

(2) The Secretary of Transportation and Attorney General of the United States shall file written comments with the Commission within 40 days of the date of acceptance of the application. These comments shall contain the information in (c)(1)(iv) of this section. Copies of these comments shall be concurrently served by first class mail on:

(i) The applicants,

(ii) The parties to the proceeding who have filed written comments, and

(iii) The Attorney General of the United States or Secretary of Transportation (whichever applies).

(d) *Replies to comments.* (1) Applicant's verified replies to comments must be filed no later than 70 days after an application is accepted.

(2) If the Commission deems it necessary, a schedule for submission of briefs and replies will be set.

(e) The Commission will conclude the evidentiary proceeding, including requests for additional information, briefs and replies, and issue a final decision by the 180th day after the filing of the application, unless otherwise ordered.

(f) *Waiver or clarification.* (1) Upon petition of a prospective applicant, the Commission may waive or clarify a portion of these procedures, concerning the initial and directly related applications. A petition to waive *all* of the procedures will not be entertained.

(2) Petitions for waiver or clarification must be filed at least 20 days before the application is filed.

(3) No replies to a petition for waiver will be permitted.

(4) All petitions for waiver, clarification or extension shall be ruled upon by the entire Commission.

(5) A petition for waiver or clarification must specify the sections for which waiver or clarification is sought and give the specific reasons why each waiver or clarification is necessary.

[45 FR 6108, Jan. 25, 1980. Redesignated at 47 FR 49592, Nov. 1, 1982, and amended at 50 FR 30188, July 24, 1985; 54 FR 38998, Sept. 22, 1989]

§ 1180.26 Definitions.

(a) *Applicant.* The parties initiating a transaction.

(b) *Applicant carriers.* Applicant, all carriers related to the applicant, and all other carriers involved in the transaction.

(c) *Major market extension.* A major market extension includes an end-to-end extension of buyer's routes and services and buyer's participation in additional through routes or joint rates. A major market extension may also significantly increase competition by (1) extending service into a new market or (2) providing significantly more efficient and effective competitive service to a market presently being served. Criteria which can be used to determine if a railroad is proposing to provide a more competitive service to a currently served area include: (i) Whether or not a shorter route is involved, (ii) if the new route provides faster service, (iii) if this route extends into major markets, (iv) under what conditions the application is filed, and (v) if the route may make the railroad competitive. *See, Burlington Northern, Inc.—Control & Merger—St. L.,* 354 I.C.C. 616, 617 (1978).

(d) *Railroad.* Any common carrier by railroad as defined in 49 U.S.C. 10102 (17)-(18).

(e) *Buyer.* The buyer is the acquiring entity and all related carriers, in an acquisition.

(f) *Seller.* The seller is the bankrupt railroad.

Subpart C—Forced Sale Procedures for Bankrupt Railroad Lines

SOURCE: 48 FR 52920, Nov. 23, 1983, unless otherwise noted.

§ 1180.40 Purpose and scope.

Under 45 U.S.C. 915, the Commission can require the sale of certain rail lines to a financially responsible person. To be eligible for such sale the line must be owned by a carrier in liquidation, and the owner must not be providing service. Further, the offeror must first have made an offer to the trustee in bankruptcy and the trustee must have rejected that offer. If the trustee and the offeror fail to reach a voluntary agreement within 120 days after the date the offer was made and the trustee has not rejected the offer the offeror may, at any time following the expiration of the 120-day period, notify the trustee that the offeror deems the failure to reach an agreement as a rejection of the offer by the trustee for the purposes of this subpart.

§ 1180.41 Submission and contents of offer.

(a) Before an application is filed, the applicant must obtain a docket number from the Commission's Office of the Secretary.

(b) Applications must be filed within 30 days of the trustee's rejection of the offer or within 30 days of the date the offeror notifies the trustee that the offeror has deemed the offer to be rejected because the trustee failed to act on it within 120 days of the date the offer was made.

(c) An offeror shall serve its application (an original and 10 copies) upon the Commission (with a copy to the Deputy Director, Rail Section, Room 5417), the trustee, and the court. In addition, the offeror shall make a good faith effort to determine whether any other offers for all or part of the line(s) in question have been made to the trustee. If other offers have been made, the offeror shall, concurrent with its filing at the Commission, serve copies of its application upon those other offerors, including persons whose offers are still pending with the trustee.

(d) Applications shall be accompanied by a filing fee in the amount set forth in 49 CFR 1002.2(f)(56).

(e) The initial offeror shall

(1) Identify the line(s) question;

(2) Certify that the trustee has rejected its offer or certify that the trustee failed to act on the offer within 120 days of the date the offer was made and that the offeror has deemed the offer to be rejected, and indicate what that offer was;

(3) Certify that it has concurrently served copies on the trustee, court, and all other known offerors;

(4) State its offering price;

(5) Offer evidence indicating that it is financially responsible; and

(6) Certify that the trustee has not accepted another offer for the line(s) in question.

[48 FR 52920, Nov. 23, 1983, as amended at 52 FR 46484, Dec. 8, 1987]

§ 1180.42 Commission's 15 day determination.

(a) The Commission (Director, Office of Proceedings) shall, within 15 days of the filing of the application, determine whether the applicant is a financially responsible person and has made a *bona fide* offer to acquire the line or lines under reasonable terms. If the Commission makes these findings, the offeror and the trustee shall enter into negotiations. If the Commission fails to make either of these findings, the application shall be dismissed.

(b) Appeals to dismissal of an application pursuant to the preceding paragraph will be governed by the rule set forth in § 1011.7(b)(1), pertaining to appeals from decisions of employees under delegated authority. An original and 10 copies of all appeals, and replies to appeals should be filed with the Commission.

§ 1180.43 Agreement between the parties.

If at any time the parties reach a voluntary agreement, a request for approval shall be filed with the Commission and the court, and the parties must comply with the regulations governing the acquisition of lines of railroads in reorganization which are set forth in subpart B of this part.

§ 1180.44 Failure to reach an acquisition agreement.

(a) If the trustee and any financially responsible offeror fail to agree on the amount of compensation or terms of acquisition within 30 days of the commencement of negotiations, either party may, within 60 days after the conclusion of the unsuccessful negotiations, request the Commission to prescribe terms for acquisition, including reasonable compensation, for the line or lines to be acquired. Requests for prescription of terms shall be served on all other parties.

(b) If no request for prescription of terms of acquisition is received by the Commission within 60 days of the unsuccessful conclusion of negotiations, the proceeding shall be terminated, and the application dismissed.

§ 1180.45 Requests to set the terms.

(a) If the Commission is requested to prescribe conditions and compensation, it shall issue its decision setting the terms and conditions within 60 days of the request.

(b) Any party filing a request shall set forth in detail in its request information showing the value of the line and any other information necessary to support the request for conditions, and serve the request on all parties of record.

(c) Other parties have 30 days to submit their supporting or opposing views to the Commission and the initial offeror.

(d) The party filing the initial request has 10 days to respond to any pleadings submitted pursuant to paragraph (c) of this section.

(e) In its decision, the Commission will establish the amount of reasonable compensation (which in no case will be less than the constitutional minimum value of the line as defined in 49 U.S.C. 10910) and set other conditions as needed. This decision will be binding on both parties except that the offeror may withdraw its offer no later than 10 days after the date the Commission's decision is served, by notifying, in writing, the Commission and all other parties to the proceeding. If there are no other offerors who are parties to the proceeding and are willing to accept the terms, the proceeding shall be terminated, and the application dismissed.

§ 1180.46 Multiple offer proceedings.

(a) Concurrent with the filing of the application, the initial offeror is required to make a good faith effort to identify and serve all other persons who either had previously made offers for all or part of the line or have offers currently pending with the trustee.

(b) Within 10 days of the filing of the application, any other party interested in making an offer for all or part of this line must file an application (an original and 10 copies) with the Commission (with a copy to the Deputy Director, Rail Section, Room 5417), the trustee, the initial offeror, and the court. That application must:

(1) Identify the line;

(2) Indicate whether an offer had ever been made to the trustee and, if so, the status of the offer;

(3) State the offering price and show why it is reasonable;

(4) Contain evidence indicating that the offeror is financially responsible; and

(5) Contain a statement certifying that the offeror has complied with the service requirements.

(c) Within 15 days of the filing of the first application, the Commission (Director, Office of Proceedings) shall determine whether any other offeror is financially responsible. Any offeror who is found financially responsible may negotiate with the trustee and has the same right to reach an agreement with the trustee as the first offeror. Any offeror who is not found to be financially responsible may not further participate in the proceeding, and its application will be dismissed.

(d) Appeals to dismissal of an application pursuant to the preceding paragraph will be handled in the manner indicated in § 1180.42(b).

(e) If an agreement is reached between the trustee and any offeror, the provisions of § 1180.43 apply.

(f) If no offeror reaches an agreement with the trustee during the negotiation period, any offeror or the trustee may request the Commission to prescribe the terms of and set conditions for acquisition. If no request is made, the proceeding will be terminated, and all applications dismissed.

(g) If more than one offeror is participating in a proceeding under these regulations, the Commission's decision setting terms and conditions will select the offeror and be based on which offer best serves the public interest.

(h) Within 10 days of the service of the Commission's decision setting the terms, all offerors, even those not initially chosen by the Commission, shall notify the Commission in writing of their willingness to accept the terms. An offeror's failure to notify the Commission of its acceptance of the terms or its refusal to accept the prescribed terms will result in that offeror being excluded from further consideration as a potential purchaser.

(i) If the originally selected offeror refuses to accept the terms, the Commission will immediately choose a purchaser among those *bona fide*, financially responsible offerors who have accepted the terms. That choice will also be based on an analysis of the public interest.

(j) If there are no such offerors willing to accept the terms, the proceeding shall be terminated, and all applications dismissed.

§ 1180.47 Transmission of the Commission's prescribed terms to the court.

Within 15 days after the Commission prescribes conditions and compensation for acquisition, the Commission shall transmit such terms to the court, unless the offer is withdrawn.

§ 1180.48 Special provisions concerning these forced sale proceedings.

(a) Any person acquiring a line or lines under these regulations shall use, to the maximum extent practicable, employees or former employees of the carrier subject to liquidation in the operation of service on such line or lines.

(b) No person acquiring a line under these regulations may transfer or discontinue service on the line for 4 years after acquisition.

(c) Commission approval of acquisition under these regulations obviates any need for the parties to seek further Commission approval under 49 U.S.C. 10901 or 11343 to consummate the transaction or institute service.

(d) If a party to an acquisition agreement approved under these regulations defaults on the obligations thereunder, then the other party to the agreement shall promptly inform the Commission. Upon notification, the Commission will take appropriate action.

(e) The Commission's prescription of conditions and compensation, once accepted by an offeror, is final. Administrative appeals will not be entertained.

§ 1180.49 Definitions for Subpart C.

(a) Carrier subject to liquidation. A carrier which on January 14, 1983 was the subject of a proceeding pending under section 77 of the Bankruptcy Act or under subchapter IV of chapter 11 of title 11, U.S. Code, and which has been ordered by the court to liquidate its properties.

(b) The court. The court having bankruptcy jurisdiction over the carrier subject to liquidation.

(c) Financially responsible person. A person capable of compensating the carrier subject to liquidation for the acquisition of the line or lines proposed to be acquired and able to cover expenses associated with providing service over such line or lines for at least four years.

PART 1181—TRANSFERS OF OPERATING RIGHTS UNDER 49 U.S.C. 10926

Sec.
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1181.6 Procedures for changing the name or business form of a motor or water carrier, household goods freight forwarder, or property broker.

AUTHORITY: 5 U.S.C. 553, and 49 U.S.C. 10321 and 10926.

SOURCE: 53 FR 4852, Feb. 18, 1988, unless otherwise noted.

§ 1181.0 Scope of rules.

These rules define the procedures that enable motor passenger and property carriers, water carriers, property brokers, and household goods freight forwarders to obtain approval from the Interstate Commerce Commission to merge, transfer, or lease their operating rights in financial transactions not subject to 49 U.S.C. 11343. Transactions covered by these rules are governed by 49 U.S.C. 10321 and 10926. The filing fee is set forth at 49 CFR 1002.2(f)(25).

§ 1181.1 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Transfer.* Transfers include all transactions (*i.e.*, the sale or lease of interstate operating rights,[1] or the merger of two or more carriers or a carrier into a noncarrier) subject to 49 U.S.C. 10926, as well as the sale of property brokers' licenses under 49 U.S.C. 10321.

(b) *Operating rights.* Operating rights include:

(1) Certificates and permits issued to motor and water carriers;

(2) Permits issued to household goods freight forwarders;

(3) Licenses issued to property brokers; and

(4) Certificates of Registration issued to motor carriers. The term also includes authority held by virtue of the gateway elimination regulations published in the FEDERAL REGISTER as letter-notices.

(c) *Certificate of registration.* The evidence of a motor carrier's right to engage in interstate or foreign commerce within a single State is established by a corresponding State certificate.

(d) *Person.* An individual, partnership, corporation, company, association, or other form of business, or a trustee, receiver, assignee, or personal representative of any of these.

(e) *Record holder.* The person shown on the records of the Commission as the legal owner of the operating rights.

(f) *Control.* A relationship between persons that includes actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, a holding or investment company, or any other means.

(g) *Category 1 transfers.* Transactions in which the person to whom the operating rights would be transferred is not an ICC carrier and is not affiliated with any ICC carrier.

(h) *Category 2 transfers.* Transactions in which the person to whom the operating rights would be transferred is an ICC carrier and/or is affiliated with an ICC carrier.

§ 1181.2 Applications.

(a) *Procedural requirements.* (1) At least 10 days before consummation, an original and two copies of a properly completed Form OP-FC-1 and any attachments (*see* paragraph (b)(1)(viii) of this section) must be filed with the Office of the Secretary, Applications and Fees Unit, Interstate Commerce Commission, Washington, DC 20423. The original must show that an additional copy has been furnished to the Commission's Regional Director for the Region(s) in which the applicants' headquarters are located. The nonrefundable filing fee prescribed by 49 CFR 1002.2(f)(25) must accompany the application.

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[1] The execution of a chattel mortgage, deed of trust, or other similar document does not constitute a transfer or require the Commission's approval. However, a foreclosure for the purpose of transferring an operating right to satisfy a judgment or claim against the record holder may not be effected without approval of the Commission.

(2) At any time after the expiration of the 10-day waiting period, applicants may consummate the transaction, subject to the subsequent approval of the application by the Commission, as described below. The transferee may commence operations under the rights acquired from the transferor upon its compliance with the Commission's regulations governing insurance, tariffs (if applicable), and process agents. *See* 49 CFR parts 1043, 1312 and 1044, respectively. In addition, contract carriers must comply with the Commission's regulations concerning contracts at 49 CFR part 1053. In the alternative, applicants may wait until the Commission has issued a decision on their application before transferring the operating rights. If the transferee wants the transferor's operating authority to be reissued in its name, it should furnish the Commission with a statement executed by both transferor and transferee indicating that the transaction has been consummated. Authority will not be reissued until after the Commission has approved the transaction.

(b) *Information required.* (1) In category 1 and category 2 transfers, applicants must furnish the following information:

(i) Full name, address, and signatures of the transferee and transferor.

(ii) A copy of that portion of the transferor's operating authority involved in the transfer proceeding.

(iii) A short summary of the essential terms of the transaction.

(iv) If relevant, the status of proceedings for the transfer of State certificate(s) corresponding to the Certificates of Registration being transferred.

(v) A statement as to whether the transfer will or will not significantly affect the quality of the human environment.

(vi) Certification by transferor and transferee of their current respective safety ratings by the United States Department of Transportation (*i.e.*, satisfactory, conditional, unsatisfactory, or unrated).

(vii) Certification by the transferee that it has sufficient insurance coverage under 49 U.S.C. 10927 for the service it intends to provide.

(viii) Information to demonstrate that the proposed transaction is consistent with the national transportation policy and satisfies the criteria for approval set forth at § 1181.4 of this part. (Such information may be appended to the application form and, if provided, would be embraced by the oath and verification contained on that form.)

(ix) If motor carrier operating rights are being transferred, certification by the transferee that it is not domiciled in Mexico nor owned or controlled by persons of that country.

(2) Category 2 applicants must also submit the following additional information:

(i) Name(s) of the carrier(s), if any, with which the transferee is affiliated.

(ii) Aggregate revenues of the transferor, transferee, and their carrier affiliates from interstate transportation sources for a 1-year period ending not earlier than 6 months before the date of the agreement of the parties concerning the transaction. If revenues exceed $2 million, the transfer may be subject to 49 U.S.C. 11343 rather than these rules.

[53 FR 4852, Feb. 18, 1988, as amended at 54 FR 35343, Aug. 25, 1989]

§ 1181.3 Notice.

The Commission will give notice of approved transfer applications through publication in the *ICC Register*.

§ 1181.4 Commission action and criteria for approval.

A transfer will be approved under this section if:

(a) The transaction is not subject to 49 U.S.C. 11343; and

(b) The transaction is consistent with the public interest; however,

(c) If the transferor or transferee has less than a satisfactory safety rating, the transfer may be conditioned or may be disapproved. If an application is conditioned or denied, the Commission will serve a decision on the parties setting forth the basis for its action. If parties with less than satisfactory safety ratings consummate a transaction pursuant to the 10-day rule at section 1181.2 of this part prior to our decision, they do so at their own risk and subject to any conditions we subsequently may impose. Transactions that have been consummated but are later denied by the Commission are null and void and must be rescinded. Similarly, if applications contain false or misleading information, they are void *ab initio*.

§ 1181.5 Responsive pleadings.

(a) Protests must be filed within 20 days after the date of publication of an approved transfer application in the *ICC Register*. Protests received prior to the notice will be rejected. Applicants may respond within 20 days after the due date of protests. Petitions for reconsideration of decisions denying applications must be filed within 20 days after the date of service of such decisions.

(b) Protests and petitions for reconsideration must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and be served on appropriate parties.

§ 1181.6 Procedures for changing the name or business form of a motor or water carrier, household goods freight forwarder, or property broker.

(a) *Scope.* These procedures (and not the transfer rules at 49 CFR parts 1181, 1182, 1183 and 1186) apply in the following circumstances:

(1) A change in the form of a business, such as the incorporation of a partnership or sole proprietorship;

(2) A change in the legal name of a corporation or partnership or change in the trade name or assumed name of any entity;

(3) A transfer of operating rights from a deceased or incapacitated spouse to the other spouse;

(4) A reincorporation and merger for the purpose of effecting a name change;

(5) An amalgamation or consolidation of a carrier and a noncarrier into a new carrier having a different name from either of the predecessor entities; and

(6) A change in the State of incorporation accomplished by dissolving the corporation in one State and reincorporating in another State.

(b) *Procedures.* To accomplish these changes, a letter must be sent to the Office of the Secretary, Applications and Fees Unit, Interstate Commerce Commission, Washington, DC 20423. The envelope should be marked "NAME CHANGE". The applicant must provide:

(1) The docket number(s) and name of the carrier requesting the change;

(2) A copy of the articles of incorporation and the State certificate reflecting the incorporation;

(3) The name(s) of the owner(s) of the stock and the distribution of the shares;

(4) The names of the officers and directors of the corporation; and

(5) A statement that there is no change in the ownership, management, or control of the business. When this procedure is being used to transfer operating rights from a deceased or incapacitated spouse to the other spouse, documentation that the other spouse has the legal right to effect such change must be included with the request. The fee for filing a name change request is in 49 CFR 1002.2(f)(11).

[53 FR 4852, Feb. 18, 1988, as amended at 54 FR 47364, Nov. 14, 1989]

PART 1182—PURCHASE, MERGER, AND CONTROL OF MOTOR PASSENGER CARRIERS AND WATER CARRIERS

Subpart A—Applications

Sec.
1182.1 Applications covered by these rules.
1182.2 Starting the application process.
1182.3 Content of applications.
1182.4 Directly related applications.
1182.5 Filing the application.
1182.6 Commission review of the application.

Subpart B—Protests

1182.7 Protests.
1182.8 Notice.
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1182.12 Amendments.
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1182.15 Copies.
1182.16 Certificate of service.
1182.17 Verification of statements.
1182.18 Statutory findings.

AUTHORITY: 5 U.S.C. 559, 49 U.S.C. 10321, 11321, 11341, 11343, 11344, and 11345a; 21 U.S.C. 853a.

SOURCE: 54 FR 35343, Aug. 25, 1989, unless otherwise noted.

Subpart A—Applications

§ 1182.1 Applications covered by these rules.

These rules govern applications for authority under 49 U.S.C. 11343-11344 to consolidate, merge, purchase, or lease operating rights and properties of a motor carrier of passengers or a water carrier, or to acquire control of one or more motor carriers of passengers or water carriers through ownership of stock or otherwise.

§ 1182.2 Starting the application process.

There is no application form for these proceedings. Applicants for authority under 49 U.S.C. 11343-11344 to consolidate, merge, purchase, or lease operating rights and properties of a motor carrier of passengers or a water carrier, or to acquire control of one or more motor carriers of passengers or water carriers, through ownership of stock, or otherwise, shall file a pleading containing the information described in 49 CFR 1182.3. *See* 49 CFR 1002.2(f)(21) for filing fees.

§ 1182.3 Content of applications.

(a) The application must contain the following information:

(1) Full name, address, and signature of each of the parties to the transaction.

(2) Copies or descriptions of the pertinent operating authorities of the parties.

(3) A description of the proposed transaction.

(4) Identification of any ICC-regulated carriers affiliated with the parties, a brief description of their operations, and a summary of the intercorporate structure of the corporate family from top to bottom.

(5) If applicants are motor carriers, a jurisdictional statement that the aggregate gross operating revenues from interstate operations conducted by them and their motor carrier affiliates, if any, exceeded $2 million for a period of 12 consecutive months, ending not more than six months preceding the date of the parties' agreement covering the transaction. *See* 49 CFR part 1188.

(6) A statement indicating whether the transaction will or will not significantly affect the quality of the human environment and the conservation of energy resources.

(7) Information to demonstrate that the proposed transaction is consistent with the national transportation policy and the public interest, including particularly:

(i) The effect of the proposed transaction on competition within the involved transportation markets;

(ii) The effect of the proposed transaction on accommodating significant transportation needs; and

(iii) If the proceeding involves a motor passenger or rail carrier, the effect of the proposed transaction on the adequacy of transportation to the public; the effect on the public interest of including, or failing to include, other carriers in the area invovled in the proposed transaction (if applicable); the total fixed charges that result from the proposed transaction; and the interest of carrier employees affected by the proposed transaction. *See* 49 U.S.C. 111344(b)(2).

(8) Certification of the U.S. Department of Transportation safety fitness rating of each motor passenger carrier involved in the transaction, whether that carrier is a party to the transaction or is affiliated with a party to the transaction.

(9) If motor passenger carriers are involved in the transaction, certification by the party acquiring any operating rights through the transaction that it has sufficient insurance coverage under 49 U.S.C. 10927 for the service it intends to provide.

(10) If water carriers are involved in the transaction, information to show that the acquiring party is fit, willing, and able properly to perform the service authorized by the certificate or permit involved and to conform to the applicable statutory and administrative requirements.

(11) If motor passenger carriers are involved in a purchase of assets or merger transaction, certification by the party acquiring any operating rights through the transaction that it is not domiciled in Mexico nor owned or controlled by persons of that country.

(12) If the transaction involves the transfer of operating authority to an individual who will hold the authority in his or her name that individual must complete the following certification:

I, ________ (Name) ________, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that I have been so convicted, I am not ineligible to receive Federal Benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

(b) The application shall contain applicants' entire case unless:

(1) The Commission finds, on its own motion or that of a party to the proceeding, that additional evidentiary submissions are required to resolve the issues in a particular case; or

(2) The application contains an impediment. (*See* 49 CFR 1182.12.)

(c) Any statements submitted on behalf of an applicant supporting the transaction shall be verified. Pleadings consisting strictly of legal argument, however, need not be verified.

(d) If an application or supplemental pleading contains false or misleading information, the granted application is void *ab initio*.

[54 FR 35343, Aug. 25, 1989, as amended at 54 FR 48250, Nov. 22, 1989]

§ 1182.4 Directly related applications.

(a) Directly related applications shall be filed along with the proposed acquisition transaction in a single submission. Such applications are those filed under other provisions of title 49, subtitle IV, U.S. Code, "Transportation," that either directly affect or are directly affected by the application filed under 49 U.S.C. 11343-11344. Typically, they include requests to obtain new operating authority, or to modify or convert existing operating authority. Whenever an application is filed under these rules and a directly related application also is filed, each application shall make reference to the other.

(b) Whenever possible, the Commission will decide directly related applications in a consolidated proceeding. In such cases, the statutory time frames governing the lead proceeding under 49 U.S.C. 11343-11344 will be applied.

§ 1182.5 Filing the application.

(a) Each application shall be filed with the Commission as provided at 49 CFR 1182.15. In addition, one copy shall be delivered to the Commission's Regional Office for the region in which each party's headquarters is located. Upon written request of a State, one copy shall be delivered, by first-class mail.

(b) In their application, the parties shall certify that they have delivered copies of the application as provided in paragraph (a) of this section.

§ 1182.6 Commission review of the application.

(a) All applications will be reviewed for correctness and completeness. Minor errors will be corrected with notification to the applicants. Incomplete applications may be rejected.

(b) A summary of the application will be published in the *ICC Register* to give notice to the public. The summary for an application involving motor carriers also will be published in the FEDERAL REGISTER. It will be published in the form of a tentative grant of authority. (*See also* 49 CFR 1182.12, regarding applications published with impediments.)

(c) If the published notice does not properly describe the authority sought, applicants shall inform the Commission within 10 days after the publication date.

Subpart B—Protests

§ 1182.7 Protests.

(a) Protests to an application shall be filed (received at the Commission) within 45 days after the date the application is published.

(b) Failure to file a timely protest waives further participation in the proceeding. If no one opposes the application, the published tentative grant of authority will automatically become effective at the close of the comment period.

§ 1182.8 Notice.

A copy of the application will be available for inspection at the Commission's offices in Washington, DC, or at the Regional Office for each applicant's domicile. Interested persons may request a copy of the application by writing to the Commission-designated contract agent (as identified in the *ICC Register*), Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, and including a check or money order for $10 made payable to such contract agent; or, by contacting the contract agent at (202) 289-4357/4359 [TDD for hearing impaired (202) 275-1721] and arranging billing acceptable to the agent.

§ 1182.9 Contents of a protest.

(a) Protests shall be verified.

(b) The protest shall contain all information upon which the protestant plans to rely, including the grounds for the protest and the protestant's interest in the proceeding.

(c) A protest may include a request that the Commission allow:

(1) Additional evidentiary submissions from the parties to a proceeding; or

(2) Further procedural steps to develop the evidentiary record (*e.g.*, discovery).

The request must demonstrate that this procedure is necessary to resolve the specific issues giving rise to the request. If the Commission finds, whether on its own motion or that of a party, that the record requires supplementation, a decision will be issued indicating the additional information required and the time frames within such information must be submitted.

§ 1182.10 Filing a protest.

(a) The protest is to be sent to the Commission with the docket number of the proceeding conspicuously placed on the top of the first page of the protest.

(b) A copy of the protest shall be served on applicant's representative(s).

§ 1182.11 Withdrawing a protest.

A protestant wishing to withdraw from a proceeding shall concurrently inform the Commission and the applicants in writing.

Subpart C—General Requirements

§ 1182.12 Amendments.

(a) After notice of an application is published, applicants may not amend their proposal unless specifically required to do so by the Commission because of an "impediment" in the application (*e.g.*, a jurisdictional problem, unresolved fitness issue, or question concerning possible unlawful control). Any such impediment will be indicated in the published notice.

(b) If an impediment is noted, applicants file a pleading suggesting a "cure" to the impediment and/or containing legal argument, within 20 days after the date the notice is published. Applicants must subsequently serve any protestant(s) with a copy of their pleading. Failure to comply with these provisions may result in dismissal of the application.

(c) Protestants wishing to file a reply to the applicants' pleading must do so within 20 days after the date applicants' pleading is filed.

(d) If replies to applicants' pleading are filed, applicants may file a rebuttal within 15 days after the date the replies were due. This optional pleading will be in addition to any evidence previously submitted by applicants in the application or the reply to protests.

§ 1182.13 Replies.

(a) If the application is opposed, applicants may file a reply to the protest(s). This reply statement is due at the Commission within 60 days after the date of publication of the application.

(b) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(c) The reply statement shall be verified unless it consists strictly of legal argument. A copy of the reply statement shall be served on protestants.

§ 1182.14 Withdrawing an application.

If applicants wish to withdraw an application, they shall jointly request dismissal in writing as provided at 49 CFR 1182.15.

§ 1182.15 Copies.

An original and one copy of all applications filed under this part and all other pleadings and material relating to such applications must be filed with the Commission in Washington, DC, and, if mailed, addressed to "Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423."

§ 1182.16 Certificate of service.

(a) Where the rules require service of a pleading on another party, that pleading shall be mailed or delivered by hand concurrently with its service on the Commission.

(b) The pleading shall contain a statement (certificate of service) that the pleading has been mailed or hand delivered in accordance with paragraph (a) of this section.

(c) All motions and replies shall be served on all parties.

§ 1182.17 Verification of statements.

(a) All applications and related pleadings (except motions to strike, replies thereto, and other pleadings that consist only of legal argument) must be verified by the person offering the statement.

(b) The manner of verification must be as follows:

I, __________, verify
(name and title of witness)
under penalty of perjury, under the laws of the United States of America, that all information supplied in connection with this application is true and correct. Further, I certify that I am qualified and authorized to file this application or pleading. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to $10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to $2,000 or imprisonment up to five years for each offense.

____
(Signature and Date)

§ 1182.18 Statutory findings.

The following findings are made for applications to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor passenger carriers or water carriers under 49 U.S.C. 11343-11344:

We find, with the exception of those applications involving impediments (*e.g.*, jurisdictional problems, unresolved fitness questions, or questions involving possible unlawful control) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11321, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated. This finding shall not be deemed to exist where the application is opposed. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

PART 1184—MOTOR CARRIER POOLING OPERATIONS

Sec.
1184.1 Scope and purpose.
1184.2 Contents of a pooling application.
1184.3 Processing pooling applications.

AUTHORITY: 49 U.S.C. 10321 and 11322; 5 U.S.C. 559.

SOURCE: 46 FR 21181, Apr. 9, 1981, unless otherwise noted. Redesignated at 47 FR 49595, Nov. 1, 1982.

§ 1184.1 Scope and purpose.

This statement of policy on motor carrier pooling applications implements section 20 of the Motor Carrier Act of 1980 [Pub. L. No. 96-296, 94 Stat. 793]. The Act's provisions are now contained at 49 U.S.C. 11342(b).

§ 1184.2 Contents of a pooling application.

A pooling application filed under 49 U.S.C. 11342(b) should include the following information:

(a) An identification of all the carriers who are parties to the pooling agreement;

(b) A general description of the transaction;

(c) A specific description of the operating authorities sought to be pooled;

(d) The basis to establish that the agreement is a genuine pooling arrangement (as opposed to a lease or interline arrangement);

(e) A description of what applicants consider to be the relevant transportation markets affected by the proposed agreement;

(f) The competitive routing and service alternatives that would remain if the agreement is approved, to the best of applicant's knowledge;

(g) If there is a lessening of such alternatives, an estimate of the public benefits that will accrue from approval, or new competition that will arise, which would offset such lessening;

(h) A narrative assessment of how the pooling arrangement will affect present and future competition in the area, including a description of the projected volume of traffic, the revenues, and the commodities which will be subject to the pooling agreement;

(i) Certification that rates set for traffic moving under the agreement do not violate the restrictions on collective ratemaking contained in 49 U.S.C. Subtitle IV and Commission regulations;

(j) A narrative statement as to the relative transportation importance of the pooling agreement as it would affect the public and the national transportation system;

(k) If any known non-pooling carriers authorized to transport the subject traffic are not included in the pooling arrangement explain why, and explain whether inclusion would enhance or restrain competition;

(l) A statement of the energy and environmental effects of the agreement, if any; and

(m) Certification by applicant, or its representatives, that the representations made in the application are, to the best of applicant's knowledge and belief, true and complete.

As appendices, applicants must submit: (1) A copy of the pooling agreement; (2) a copy of the specific operating authority of each carrier which is the subject of the pooling agreement; and (3) a caption summary (for FEDERAL REGISTER publication) of the pooling transaction sought to be approved.

[46 FR 21181, Apr. 9, 1981. Redesignated and amended at 47 FR 49595, Nov. 1, 1982]

§ 1184.3 Processing pooling applications.

After the pooling application is received (not less than 50 days before the effective date specified in the pooling agreement), the Commission will either reject it or determine initially whether the pooling agreement is of major transportation importance and whether there is a substantial likelihood that the pooling agreement will unduly restrain competition. If neither of these two factors is present, the application will be granted without further hearing. Where either factor is found to exist, the application will be published in the FEDERAL REGISTER using the caption summary filed with the application, and a hearing will be scheduled (normally to receive written verified statements) to consider the issues further. In this second phase of the proceeding, the Commission will consider whether the pooling agreement would be in the interest of better service to the public or of economy of operation and whether it will unduly restrain competition.

PART 1185—INTERLOCKING OFFICERS

Sec.

1185.1 Scope of exemption.
1185.2 Meaning of term "carrier."
1185.3 Application of regulations.
1185.4 Authorization.
1185.5 Application for order.
1185.6 Contents of application.
1185.7 Subscription and verification of application.
1185.8 Number of copies; form and style.
1185.9 General authority.
1185.10 Common control.
1185.11 Jointly used terminal properties.

AUTHORITY: 49 U.S.C. 10321, 11322, and 10505; 5 U.S.C. 553 and 559.

§ 1185.1 Scope of exemption.

(a) Subject to the exception in paragraph (c) of this section, "interlocking directorates," as defined in paragraph (b) of this section, are exempt from the prior approval requirements of 49 U.S.C. 11322(a).

(b) An "interlocking directorate" exists whenever an individual holds the position of officer (as defined in § 1185.3) or director of one carrier and assumes the position of officer or director of another carrier.

(c) The exemption in paragraph (a) of this section does not apply to those interlocking directorates sought where the individual is already an officer or a director of a Class I railroad and seeks to become an officer or director of another class I railroad. An application under 49 U.S.C. 11322(a) or a petition for exemption under 49 U.S.C. 10505 for authority for this type of interlocking arrangement must be filed.

(d) This exemption does not affect the competitive bidding requirements of section 10 of the Clayton Act (15 U.S.C. 20), as implemented in part by 49 CFR Part 1010.

[53 FR 39097, Oct. 5, 1988; 53 FR 40068, Oct. 13, 1988]

§ 1185.2 Meaning of term "carrier."

The term "carrier" is used in this part as it is defined in 49 U.S.C. 11301(a)(1).

[32 FR 20095, Dec. 20, 1967. Redesignated and amended at 47 FR 49595, Nov. 1, 1982. Redesignated at 53 FR 39097, Oct. 5, 1988]

§ 1185.3 Application of regulations.

The regulations in this part apply to any person authorized by or undertaking for each of two or more class I rail carriers to perform the duties, or any of the duties, ordinarily performed by a director, president, vice president, secretary, treasurer, general counsel, general solicitor, general attorney, comptroller, general auditor, general manager, freight traffic manager, passenger traffic manager, chief engineer, general superintendent, general land and tax agent, or chief purchasing agent of a carrier.

[53 FR 39097, Oct. 5, 1988]

§ 1185.4 Authorization.

Authorization will be granted only upon application as provided in this part.

[47 FR 49595, Nov. 1, 1982. Redesignated at 53 FR 39097, Oct. 5, 1988]

§ 1185.5 Application for order.

An application for such authorization may be made by any person in his own behalf.

[32 FR 20095, Dec. 20, 1967. Redesignated and amended at 47 FR 49595, Nov. 1, 1982. Redesignated at 53 FR 39097, Oct. 5, 1988]

§ 1185.6 Contents of application.

Each application shall state the following:

(a) The full name, occupation, business address, place of residence, and postoffice address of the applicant.

(b) A specification of every carrier of which the applicant holds stock, bonds, or notes, individually, as trustee, or otherwise; and the amount of and accurately describe the securities, owned or held by him, of each carrier for which he seeks authority to act. Whenever it is contemplated that the applicant will represent on the board of directors of any carrier securities other than those owned by him, the application shall describe such securities, state the character of representation, the name of the beneficial owner or owners, and the general nature of the business conducted by such owner or owners.

(c) Each and every position with any carrier:

Which is held by the applicant at the time of the application; and which he seeks authority to hold, together with the date and manner of his election or appointment thereto and, if he has entered upon the performance of his duties in any such position, the nature of the duties so performed and the date when he first entered upon their performance. (A decision authorizing a person to hold the position of director of a carrier will be construed as sufficient to authorize him to serve also as chairman of its board of directors or as a member or chairman of any committee or committees of such board; and, therefore, when authority is sought to hold the position of director, the applicant need not request authority to serve in any of such other capacities.)

(d) As to each carrier covered by the requested authorization, whether it is an operating carrier, a lessor company, or any other corporation organized for the purpose of engaging in transportation by railroad subject to the act. If any such carrier neither operates nor owns any railroad, transportation by which is subject to the act, there shall be filed with the application, as a part thereof, a copy of such carrier's charter or certificate or articles of incorporation, with amendments to date. When such copy has once been filed with the Commission, reference thereto, with amendments, if any, will suffice.

(e) Thereafter a full statement of pertinent facts relative to any carrier which does not make annual reports to the Commission, authorization for a position with which is sought.

(f) Full information as to the relationship, operating, financial, competitive, or otherwise, existing between the carriers covered by the requested authorization.

(g) Specify every corporation—industrial, financial, or miscellaneous—of which the applicant is an officer or director, and the general character of the business conducted by such corporation.

(h) The reasons, fully, why the granting of the authority sought will not affect adversely either public or private interests.

(i) Whether or not any other application for authority has been made in behalf of the applicant and, if so, shall show the date and finance docket number thereof, by who made, and the action thereon, if any.

(j) When application has been made in behalf of any person, a subsequent application by him need not repeat any statement contained in the previous application but may incorporate the same by appropriate reference.

[32 FR 20095, Dec. 20, 1967. Redesignated and amended at 47 FR 49595, Nov. 1, 1982. Redesignated at 53 FR 39097, Oct. 5, 1988]

§ 1185.7 Subscription and verification of application.

The original application shall be signed by the individual applicant, and shall be verified under oath in substantially the following form:

State of——————
County of——————, *ss.*

——————make —— oath and say—that——————hold—no position as officer or director of any carrier or other corporation except as indicated in the foregoing application, and that all of the statements contained therein are true and correct to the best of———knowledge and belief.

————————————————
(Signature of applicant)

Subscribed and sworn to before me, a ————in and for the State and county above named, this———day of————, 19—.

[SEAL]

My commission expires ——————————

[32 FR 20095, Dec. 20, 1967. Redesignated at 47 FR 49595, Nov. 1, 1982. Redesignated at 53 FR 39097, Oct. 5, 1988]

§ 1185.8 Number of copies; form and style.

The original application and 10 copies thereof shall be filed with the Commission. Each copy shall bear the dates and signatures that appear on the original and shall be complete in itself, but the signatures in the copies may be stamped or typed and the notarial seal may be omitted. The application shall be submitted in typewritten or printed form, on paper not more than 8½ inches wide and not more than 12 inches long, with a left-hand margin of 1½ inches, and if typewritten, the impression must be on only one side of the paper, and must be double spaced.

[32 FR 20095, Dec. 20, 1967. Redesignated and amended at 47 FR 49595, Nov. 1, 1982; 53 FR 19303, May 27, 1988. Redesignated at 53 FR 39097, Oct. 5, 1988]

§ 1185.9 General authority.

Any person, who has been or shall hereafter be authorized to hold positions with a carrier or with a company or companies subsidiary thereto or affiliated therewith, may include in any application made by him pursuant to the foregoing regulations in this part a request for a decision authorizing him to hold generally, in addition to the positions so specifically authorized, a directorship or any office or offices with the first-mentioned carrier and all companies subsidiary thereto or affiliated therewith, or the properties of which are operated or used by the carrier, either separately or jointly, with other carriers. Like general authority may be applied for by the first-mentioned carrier in behalf of any person or persons to whom such specific authority has heretofore been granted: *Provided,* That such general authority may not be applied for by such carrier when the person for whom authority is desired holds a position or positions with any carrier or carriers not subsidiary to or not affiliated with the first-mentioned carrier, or the properties of which are not operated or used by the first-mentioned carrier, either separately or jointly with other carriers. Every carrier application shall be verified by an executive officer having knowledge of the facts.

[32 FR 20095, Dec. 20, 1967. Redesignated and amended at 47 FR 49595, Nov. 1, 1982; Redesignated at 53 FR 39097, Oct. 5, 1988]

§ 1185.10 Common control.

It shall not be necessary for any person to secure authorization under the foregoing provisions to hold the position of officer or director of two or more carriers, if such carriers are operated under common control or management, either.

(a) Pursuant to approval and authority of the Commission granted under 49 U.S.C. 11343-11344, or

(b) Pursuant to an exemption authorized by the Commission under 49 U.S.C. 10505, or

(c) Pursuant to a controlling, controlled, or common control relationship which has existed between such carriers since before June 16, 1933.

[35 FR 7651, May 16, 1970, as amended at 44 FR 75386, Dec. 20, 1979. Redesignated and amended at 47 FR 49595, Nov. 1, 1982. Redesignated at 53 FR 39097, Oct. 5, 1988]

§ 1185.11 Jointly used terminal properties.

Any person holding the position of officer or director of a carrier is hereby relieved from the foregoing provisions to the extent that he may also hold a directorship and any other position to which he may be elected or appointed with a terminal railroad the properties of which are operated or used by such carrier jointly with other carriers.

[35 FR 7651, May 16, 1970. Redesignated at 47 FR 49595, Nov. 1, 1982. Redesignated at 53 FR 39097, Oct. 5, 1988]

PART 1186—EXEMPTION OF CERTAIN TRANSACTIONS UNDER 49 U.S.C. 11343

Sec.
1186.1 Scope of exemptions.
1186.2 Notice of exemption.
1186.3 Attachments.
1186.4 Temporary authority.
1186.5 Filing fees.
1186.6 Publication of summary notice.
1186.7 Effective date of exemption.
1186.8 Complaints.
1186.9 Safety fitness.

AUTHORITY: 49 U.S.C. 11321, 11343(e); 5 U.S.C. 553; and 21 U.S.C. 853a.

§ 1186.1 Scope of exemptions.

Any transaction under 49 U.S.C. 11343(a)(1)-(5) among motor carriers of property or between them and noncarriers is exempt from the requirements of 49 U.S.C. 11343, 11344, and 11345a, subject to the right of employees and others to file complaints as set forth in § 1186.8.

[53 FR 4853, Feb. 18, 1988]

§ 1186.2 Notice of exemption.

To qualify for an exemption under § 1186.1, the participants in the transaction must file an original and four copies of a joint Notice of Exemption with the Commission. The Notice of Exemption shall contain the following information:

(a) Names and addresses of the carriers or other parties involved;

(b) A brief, but specific description of the nature of the transaction;

(c) Certification of the accuracy of the contents of the notice by, and signature of, the persons who control the carriers or other parties involved in the transaction; and

(d) A jurisdictional statement stating why the transaction is subject to 49 U.S.C. 11343-11344.

(e) In purchase of assets or merger transactions, certification by the party acquiring any motor carrier operating rights through the transaction that it is not domiciled in Mexico nor owned or controlled by persons of that country.

(f) If the transaction involves the transfer of operating authority to an individual who will hold the authority in his or her name, that individual must complete the following certification:

I, ________ (Name) ________, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal Benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

[53 FR 4853, Feb. 18, 1988, as amended at 54 FR 35346, Aug. 25, 1989; 54 FR 48251, Nov. 22, 1989]

§ 1186.3 Attachments.

Attachments (an original and 10 copies) to the Notice of Exemption filed with the Commission should include:

(a) A short summary of the transaction to be published as a notice to the public; and

(b) If appropriate, draft certificates and permits reflecting the operating rights authorized to be acquired, retained, or issued.

[50 FR 6348, Feb. 15, 1985, as amended at 53 FR 19303, May 27, 1988]

§ 1186.4 Temporary authority.

Parties may simultaneously request temporary authority during the pendency of the exemption proceeding by submitting Form OP-F-46 in accordance with the regulations at 49 CFR part 1187.

[54 FR 35346, Aug. 25, 1989]

§ 1186.5 Filing fees.

The filing fee required to file a Notice of Exemption is set forth in 49 CFR 1002.2(f)(27).

[53 FR 4853, Feb. 18, 1988]

§ 1186.6 Publication of summary notice.

The Commission will publish the summary of the Notice of Exemption describing the nature and scope of the transaction in the ICC Register.

[50 FR 6348, Feb. 15, 1985]

§ 1186.7 Effective date of exemption.

When a Notice of Exemption is filed, the exemption will be effective 60 days after a summary of the Notice of Exemption is published in the *ICC Register* except:

(a) Where consummation is contingent upon Commission approval of directly related applications involving the conversion of certificates of registration to certificates of public convenience and necessity; or

(b)(1) In the case of employee complaints, a decision will be served and effective 30 days after receipt of the complaint unless the complaint is filed less than 30 days after publication of the summary of the Notice of Exemption, in which case the decision will be effective 60 days after publication of the summary of the Notice of Exemption; or

(2) In the case of a complaint on anticompetitive grounds, a decision will be served and effective 30 days after the due date for complaints.

[50 FR 6348, Feb. 15, 1985]

§ 1186.8 Complaints.

(a) *Employee complaints.* Employees who have been or may be adversely affected by an exempt transaction or transaction proposed for exemption may file a complaint with the Commission any time after the Notice of Exemption is filed. A copy of the complaint must be served on the parties to the transaction. The parties may file an answer with the Commission and upon complaint within 10 days after receipt of the complaint. Employee complaints must contain the following information:

(1) The docket number of the corresponding Notice of Exemption (if available at the time) and the names of the participants in the transaction;

(2) Names of the employees alleged to be affected by the transaction and the nature and scope of harm;

(3) A request for specific relief (requests for relief in the alternative are acceptable);

(4) An explanation as to why the particular relief sought is the appropriate remedy for the particular harm suffered; and

(5) (Optional) A request for suspension or revocation of the exemption, accompanied by information showing why suspension or revocation of exemption is necessary.

(b) *Anticompetitive complaints.* Any party may file a complaint with the Commission within 30 days after the Notice of Exemption is published alleging that the transaction is potentially anticompetitive. A copy of the complaint must be served on the parties to the transaction. The parties may respond by filing an answer with the Commission and upon complainant within 10 days after the due date of the complaint. The complaint must contain the following information:

(1) The docket number of the corresponding Notice of Exemption (if available at the time) and the names of the participants in the transaction;

(2) A specific description of the manner in which competition will allegedly be adversely affected;

(3) A request for specific relief (requests for relief in the alternative are acceptable); and

(4) An explanation as to why the particular relief sought is deemed to be appropriate.

(c) Petitioners shall promptly furnish any interested party with a copy of the Notice of Exemption and any attachments, free of charge.

[53 FR 4853, Feb. 18, 1988]

§ 1186.9 Safety fitness.

The Commission will consider the DOT safety rating of the parties in transactions where operating authority is purchased or merged. All parties to the transaction must certify their current safety ratings in their Notice of Exemption. If either party has less than a satisfactory safety fitness rating, the exemption may be either conditioned on improvement in that rating, or disapproved. If parties with less than satisfactory ratings consummate a transaction 60 days after publication of the Notice of Exemption but prior to our decision, they do so at their own risk and subject to any conditions we subsequently may impose. If a Notice of Exemption contains false or misleading information, the exemption is void *ab initio.*

[53 FR 4854, Feb. 18, 1988]

PART 1187—TEMPORARY AUTHORITY IN MOTOR AND WATER CARRIER FINANCE PROCEEDINGS

Sec.

1187.1 Applications governed by these rules.
1187.2 Procedures used generally.
1187.3 Applications.
1187.4 Commission action.
1187.5 Protests.

AUTHORITY: 5 U.S.C. 559 and 49 U.S.C. 10321, 10926, 11341, 11343, 11344, and 11349.

SOURCE: 54 FR 35346, Aug. 25, 1989, unless otherwise noted.

§ 1187.1 Applications governed by these rules.

These rules govern the handling of applications filed for temporary authority to operate motor property carrier, motor passenger carrier, and water carrier properties sought to be acquired in separately filed applications or petitions for exemption under:

(a) 49 U.S.C. 11343-11344 (for authority to consolidate, purchase, merge, or lease operating rights and properties of, or to acquire control of, motor property carriers, motor passenger carriers, and water carriers); or

(b) 49 U.S.C. 10926 (for the transfer of certificates and permits of motor property carriers, motor passenger carriers, and water carriers).

§ 1187.2 Procedure used generally.

Since the basis for filing applications for temporary authority under these rules is to prevent destruction of or injury to motor carrier or water carrier properties sought to be acquired under 49 U.S.C. 11343-11344 or 10926, these rules are designed to permit the Commission to decide expeditiously temporary authority applications. The Commission has no obligation to give public notice of applications filed under these rules for temporary authority. Cases are decided without hearing or other formal proceeding. However, the rules do permit the Commission, when feasible, to publish notice of temporary authority applications, and such applications may be opposed.

§ 1187.3 Applications.

(a) *Starting the application process.* Persons seeking temporary authority under this section shall complete application form OP-F-46. (*See* 49 CFR part 1003 and § 1002.2(f)(24) regarding forms and filing fees.) An application for temporary authority may only be filed concurrently with or after the filing of a related application or petition for exemption under 49 U.S.C. 11343-11344 or 10926.

(b) *Information to be submitted by applicants.* The application form constitutes applicants' entire case and shall contain all of the information on which applicants intend to rely.

(c) *Where the application is sent.* The original and one copy of the application shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, along with the application fee. In addition, one copy of the application shall be sent by applicants to each of the persons and State officials specified on the application form. When an application for temporary authority is filed after the filing and publication of notice of the related acquisition transaction (under 49 U.S.C. 11343-11344 or 10926), applicants also shall serve a copy of the temporary authority application on all parties of record in the related transaction as of the date of the filing.

§ 1187.4 Commission action.

(a) Where an application for temporary authority is filed concurrently with the related acquisition application or petition for exemption, notice of filing of the temporary authority application will appear in the published notice of the corresponding permanent application or petition.

(b) The temporary authority application (and protests, if any) will be submitted to an appropriate decisional body for disposition as soon as possible after filing. These rules do not provide for any specific time period for the filing of opposition to concurrently filed temporary authority applications. A temporary authority request may be acted upon before the publication of the related permanent application or petition for exemption.

§ 1187.5 Protests.

(a) *Who can oppose an application.* A protest to an application for temporary authority filed under these rules may be filed only by persons who oppose or intend to oppose the related permanent application or petition for exemption filed under 49 U.S.C. 11343-11344 or 10926.

(b) *Contents of a protest.* A protest to an application for temporary authority shall be in writing. The protest shall state the protestant's interest in the proceeding and the specific grounds on which protestant relies in opposing the temporary authority application. The protest also shall indicate that a copy has been served on applicants' representative(s).

(c) *To whom the protest is sent.* The original and one copy of the protest shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423. A copy of the protest shall be served on applicants' representative(s).

PART 1188—GROSS OPERATING REVENUES OF CARRIERS INVOLVED IN FINANCE PROCEEDINGS

Sec.
1188.1 Computation of gross operating revenues of carriers involved in unifications.
1188.2 Deduction of revenues from sources other than regulated transportation.

AUTHORITY: 5 U.S.C. 559 and 49 U.S.C. 10321, 11341, 11343, 11344, and 11345a.

SOURCE: 54 FR 35346, Aug. 25, 1989, unless otherwise noted.

§ 1188.1 Computation of gross operating revenues of carriers involved in unifications.

In proceedings involving consolidation, merger, or acquisition of control of motor carriers under 49 U.S.C. 11343, the aggregate gross operating revenues of carriers attributable to transportation from the use of their respective operating rights subject to subchapter II of chapter 105 of the Act shall be deemed to have exceeded $2 million for the period of 12 consecutive months ending not more than six months preceding the date of the agreement of the parties covering the transaction, within the meaning of 49 U.S.C. 11343(d)(1), unless otherwise shown, under each of the following circumstances:

(a) At the end of the preceding calendar year the carriers involved in the transaction filed reports with the Commission, as required by 49 U.S.C. 11145, showing annual gross operating revenues from motor carrier operations totaling more than $2 million, and none of the carriers has sold or otherwise disposed of any portion of its operating rights subsequent to the end of the preceding calendar year;

(b) A carrier involved in the transaction filed a quarterly report or reports for subsequent quarters, and a reasonable estimate of its annual gross operating revenues and the reported annual gross operating revenues of the other carriers involved in the transaction for the preceding calendar year aggregates more than $2 million; or

(c) A reasonable estimate of:

(1) The annual gross operating revenues of any carrier which sold or otherwise disposed of any portion of its operating rights or which began new operations or extended existing operations subsequent to the end of the preceding calendar year; and

(2) The reported annual gross operating revenues of the other carriers involved in the transaction for the preceding calendar year aggregates more than $2 million.

§ 1188.2 Deduction of revenues from sources other than regulated transportation.

(a) In determining whether a proposed transaction is subject to the provisions of 49 U.S.C. 11343, applicant motor carriers and their affilitate motor carriers must select the same 12-month period and indicate the 12-month period selected, as provided in § 1188.1, and must disclose the gross revenues received by each such carrier during the critical period selected and the revenues derived from sources other than transportation subject to subchapter II of chapter 105 of the Act. Such latter revenues may be deducted from the gross revenues for the purpose of determining jurisdiction.

(b) Applicants shall show the amounts which they claim should be deducted, the sources from which the revenues were derived, and the circumstances under which transportation performed is claimed not to have been subject to subchapter II of chapter 105 of the Act, in transfer proceedings under 49 CFR part 1181 or in support of a motion for dismissal of proceedings under 49 CFR part 1182 or 1186.

(c) Applicants shall not be required to show that the revenues computed under § 1188.1 were dervived from transportation subject to subchapter II of chapter 105 of the Act.

PARTS 1189–1199—[RESERVED]

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Redesignation Table

Editorial Note: Subchapter B of Chapter X was reorganized at 47 FR 49541, Nov. 1, 1982. The following table shows the relationship of the old section numbers to the new.

REDESIGNATION TABLE

Old section	New section
Part 1031a	Part 1138.
1045.11	1181.32.
Part 1100:	
1100.1	1100.1, 1100.2.
1100.2	1100.3.
1100.3	1100.4.
1100.4	1102.1, 1100.2, 1104.6, 1100.8, & 1100.10.
1100.5.	Part 1101.
1100.6	
1100.7	1103.1.
1100.8	1103.2.
1100.9	1103.3.
1100.10	1103.4.
1100.11	1103.5.
1100.12	1113.31.
1100.13	1104.2.
1100.14	1104.3.
1100.15	1104.4.
1100.16	1104.5.
1100.17	1104.9.
1100.18	1104.11.
1100.19	1104.7.
1100.20	1104.12.
1100.21	1104.13.
1100.22	1130.1.
1100.22a	1130.3.
1100.23	1130.2.
1100.24	Removed.
1100.25	1131.6 & 1111.1.
1100.26	1131.1 & 1111.1.
1100.27	1131.2.
1100.28	Removed.
1100.29	1131.2, 1131.5 & 1111.1.
1100.30	1131.1.
1100.31	1131.7.
1100.32	1111.2.
1100.33	1131.9 & 1111.4.
1100.34	1131.10 & 1111.5.
1100.35	1131.11 & 1111.6.
1100.36	Removed.
1100.37	Removed.
1100.38	Removed.
1100.39	1118.4(e).
1100.40	1132.1.
1100.41	1111.7.
1100.43	1112.1 & 1112.2.
1100.44	1131.9(d), 1111.4, & 1112.3.
1100.45	Removed.
1100.46	1112.5.
1100.47	1112.6, 1112.7, & 1133.1.
1100.48	1112.8 & 1112.9.
1100.49	Removed.
1100.50	Removed.
1100.51	1112.10.
1100.52	Removed.
1100.53	1113.1.
1100.54	1113.2.
1100.55	1114.21.
1100.56	1114.22.
1100.57	1114.23.
1100.58	1114.24.
1100.59	1114.25.
1100.60	1114.26.
1100.61	1114.27.
1100.62	1114.28.
1100.63	1114.29.
1100.64	1114.30.
1100.65	1114.31.
1100.66	1113.3.
1100.67	1113.4.
1100.68	1113.5.
1100.69	1113.3 & 1113.6.
1100.70	1113.7.
1100.71	1113.7.
1100.72	1113.8.
1100.73	1114.1.
1100.74	1113.3.
1100.75	1113.9.
1100.76	1114.2.
1100.77	1114.3.
1100.78	Removed.
1100.79	1114.4.
1100.80	1113.10 & 1114.5.
1100.81	1113.11.
1100.82	1114.7 & 1113.12.
1100.83	Removed.
1100.84	1113.13.
1100.85	1113.14 & 1113.15.
1100.86	1113.16.
1100.87	1113.1.
1100.88	1113.17.
1100.89	1113.18.
1100.90	1113.18.
1100.91	Removed.
1100.92	Removed.
1100.93	Part 1116.
1100.94	1119.1.
1100.95	1133.2.
1100.96	Removed.
1100.98	Part 1115.
1100.99	1117.1.
1100.100	Removed.
1100.101	Removed.
1100.102	Removed.
1100.200	1132.2.
1100.225	Part 1118.
1100.240	1182.1.
1100.241	1182.2.
1100.242	1182.3.

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Old section	New section
1100.243	1182.4.
1100.244	1182.5.
1100.245	Part 1161.
1100.246	1153.9.
1100.248	Removed.
1100.249	Removed.
1100.250	Part 1134.
1100.251	1160.1–1160.23.
1100.252	1160.40–1160.49.
1100.253	1160.66–1160.68.
Appendix A	1103.11–1103.35.
Appendix B:	
Form 1	Removed.
Form 2	Removed.
Form 3	1104.12.
Form 4	Removed.
Form 5	1133.2.
Form 6	1112.9.
Form 7	1161.5 Appendix.
Appendix C	1102.2.
Appendix D	Removed.
Appendix E	Removed.
Appendix F	Removed.
Appendix G	Removed.
Part 1101	Part 1163.
Part 1102	Part 1135.
Part 1103	Part 1110.
Part 1104	Part 1139.
Part 1104A	Part 1120.
Part 1105	Part 1136.
Part 1106	Part 1106.
Part 1107	Removed.
Part 1108	Part 1105.
Part 1109:	
1109.5	11371.1.
1109.15	11371.2.
Part 1110	Removed.
Part 1111	Part 1180.
Part 1112	Part 1185.
Part 1113	Removed.
Part 1114	Part 1176.
Part 1115	Part 1175.
Part 1116	Part 1177.
Part 1117:	Part 1190.
1117.1–1117.12	1190.1–1190.12.
1117.51–1117.55	1190.20–1190.24.
Part 1118	Part 1191.
Part 1120	Part 1150.
Part 1120A	Removed.
Part 1121:	Part 1152.
1121.10	1152.1.
1121.11	1152.2.
1121.20–.25	1152.10–1152.15.
1121.30–.34	1152.20–1152.24.
1121.36	1152.25.
1121.37	1152.26.
1121.38	1152.27.
1121.39	1152.28.
1121.40–.47	1152.30–1152.37.
1121.60–.63	1152 40–1152–.43.
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Part 1122	Part 1153.
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Part 1125	Part 1155.
Part 1126	Part 1156.
Part 1127	Part 1157.
Part 1128	Part 1151.
Part 1129	Part 1140.
Part 1131	Part 1162 Subpart A.
Part 1131A	Part 1162 Subpart B.
Part 1132	Part 1181 Subpart A.
Part 1133	Part 1181 Subpart D.
Part 1134:	Part 1183.
1134.1	1183.1.
1134.3	1183.2.
1134.4	1183.3.
1134.6	1183.4.
1134.50	1183.5.
1134.51	1183.6.
Part 1135	Part 1192.
Part 1136	Part 1167.
Part 1137	Part 1165.
Part 1138	Part 1164.
Part 1139	Part 1184.
Part 1140	Part 1166.
Part 1141	Part 1181 Subpart B.
Part 1151	Part 1181 Subpart C.

Redesignation and Derivation Tables

At 51 FR 45899, Dec. 23, 1986, Part 1039 was amended, Part 1312 was removed, and Part 1313 was added. In order to enable readers to check the completeness and accuracy of these parts, the following Redesignation and Derivation Tables are set as follows.

Old section	New section
Part 1309	Part 1313
1039.1	1313.1
1039.2	1313.3(a)
1039.2(a)	1313.3(a)
1039.2(b)	1313.6(c)
1039.2(c)	1313.2(c)
1039.2(d)	1313.2(a)
1039.2(e)	1313.3(b)
1039.3(a)	1313.7(a)
1039.3(b)–(c)	1313.17
1039.3(d)	1313.16
1039.3(e)	1313.17
1039.3(e), (e)(1) and (2)	1313.2(d)
1039.3(f)	1313.2(b)
1039.3(g)	1313.4(c)
1039.4	1313.4(a)
1039.5	1313.5
1039.6	1313.6 (a), (b), and (d)
1039.19	1313.3(c)
Part 1300: [1]	
1300.310(b)(1)	1313.8(b)(1) and 1313.15(a)
1300.310(b)(2)	1313.15(a)
1300.310(b)(3)	1313.16
1300.310(b)(4)	1313.16(a)
1300.311(b)	1313.7(b)
Part 1312.41:	
1312.41(a)(1)	1313.7(a)
1312.41(a)(2)–(4)	1313.8
1312.41(b)	1313.7(b)
1312.41(c)	1313.7(c)
1312.41(d)	1313.10–1313.13
1312.41(d)(4)	1313.9(a)
1312.41(e)	1313.8(b)(1)
1312.41(f)	1313.3
1312.41(g)	1313.3(d)

[1] Appendix to July 13, 1984 decision (49 FR 28718–28720) and not recodified at Part 1312.41.

New section	Old section [1]
Part 1313:	
1313.1	1039.1
1313.2(a)	1039.2(d)
1313.2(b)	1039.3(i)
1313.2(c)	1039.3(e), (e) (1) and (2)
1313.2(d)	1039.2(c)
1313.3(a)	1039.2, (2)(a); 1312.41(f)
1313.3(b)	1039.2(e)
1313.3(c)	1039.19
1313.3(d)	1312.41(g)
1313.4 (a) and (b)	1039.4
1313.4(c)	1039.3(g)
1313.5	1039.5
1313.6 (a) and (b)	1039.6
1313.6(c)	1039.2(b)
1313.6(d)	1039.6
1313.7(a)	1039.3(a); 1312.41(a)(1)
1313.7(b)	1300.311(b); 1312.41(b)
1313.7(c)	1312.41(c)
1313.8(a)	1312.41(a)(2)–(4)
1313.8(b)	1300.310(b)(1); 1312.41(e)
1313.9(a)	1312.41(d)(4)
1313.9(b)	New
1313.10	1312.41(d)
1313.11	1312.41(d)
1313.12	1312.41(d)
1313.13	1312.41(d)
1313.14	New
1313.15	1300.310(b) (1) and (2)
1313.16	1039.3(d); 1300.310 (b)(3) and (b)(4)
1313.17	1039.3 (b)–(c) and (e)

[1] Appendix to July 13, 1984 decision (49 FR 28718–28720) and not recodified at Part 1312.41.

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes.

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1000 Appendix I revised.......... 16230
1002.1 (h) revised; (i) added.......... 18379
1002.2 (d)(40) corrected.......... 5876
1003.1 Amended.......... 6828, 10445
1003.2 Amended.......... 3389
1003.3 Amended.......... 3389
1006 Added.......... 21932
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1023.33 Amended.......... 32581, 33773
1023.40 (b) revised.......... 32581, 33773
1023.105 Added.......... 32581, 33773
1023.106 Added.......... 32582, 33773
1033.7 Amended.......... 10154
1033.995 (f) revised.......... 35002
1033.1002 (d) revised.......... 35002
1033.1043 (g) revised.......... 16650, 35001
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1033.1083 (e) revised.......... 877, 19126
1033.1084 (e) revised.......... 20840
1033.1086 (e) revised.......... 877, 5876
1033.1087 (e) revised.......... 877, 5876
1033.1089 (e) revised.......... 877, 8657, 10941, 14754
1033.1091 (e) revised.......... 878, 14754
1033.1093 (d) revised.......... 3332
1033.1098 (e) revised.......... 10941
1033.1100 (d) revised.......... 878, 14754, 22625
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1033.1102 (d) revised... 17843, 33086, 33302
1033.1104 (e) revised.......... 3512, 8445, 14754, 18024, 20621, 30559

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1033.1106 (e) revised.......... 3332, 14754
1033.1107 (e) revised.......... 5876, 18025
1033.1108 (e) revised.......... 5876
1033.1110 (a) and (e) revised.......... 878, 3333, 3512, 5636, 8446, 10942, 14755, 18025, 20621
1033.1111 (e) revised.......... 878, 3332, 5637, 8446, 10942, 14755, 18025, 20621, 21638
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1033.1113 (e) revised.......... 5877
1033.1114 (e) revised.......... 5877, 18025
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1033.1117 Added.......... 1743
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1033.1118 Added.......... 2761
1033.1119 Added.......... 3513
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(f) revised.......... 29881
1033.1120 Added.......... 3514
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1033.1121 Added.......... 3514
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1033.1123 Added.......... 5175
1033.1124 Added.......... 6828
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1033.1126 Added....6999
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1033.1128 Added....8062
1033.1129 Added....8062
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1033.1131 Added....9232
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1033.1132 Added....9668
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1033.1142 Added....18876
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1033.1147 Added....21638
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1033.1161 Added....31310
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1121.21 (c) amended; (i) added....24902
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1123 Added....12745
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1033.1043 (g) revised....24373
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1033.1084 (e) revised....3827, 27672
1033.1102 (d) revised....18655
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1033.1106 (e) revised....3827, 27671, 33302
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1033.1121 (d) revised..........12009
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1033.1138 (f) revised..........12352, 33482
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